STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

- -

The State of Minnesota,
by Hubert H. Humphrey, III,
its attorney general,
and
Blue Cross and Blue Shield
of Minnesota,

Plaintiffs,

vs. File No. C1-94-8565

Philip Morris Incorporated, R.J.
Reynolds Tobacco Company, Brown
& Williamson Tobacco Corporation,
B.A.T. Industries P.L.C., Lorillard
Tobacco Company, The American
Tobacco Company, Liggett Group, Inc.,
The Council for Tobacco Research-U.S.A.,
Inc., and The Tobacco Institute, Inc.,

Defendants.

- -

DEPOSITION OF EMANUEL RUBIN, M.D.

Volume II, Pages 244- 461

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(The following is the Deposition of EMANUEL RUBIN, M.D., taken pursuant to Notice of Taking Deposition, at the offices of Dorsey & Whitney, Attorneys at Law, Pillsbury Center South, 220 South Sixth Street, Minneapolis, Minnesota, on September 5, 1997, commencing at approximately 8:28 o'clock a.m.)

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3503	Memorandum of Apr 9, 1962 Brady to Little; HK 0039151-152	284
3504	Doc. ent. "A Statement About Tobacco and Health"; 1 page	314
3505	Handwritten notes labeled C.T.R. Meeting; MNAT00770693-695	317
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	3515	Minutes of Meeting to Discuss Results of Experiments with Smoking Dogs Conducted by Dr. Oscar Auerbach, Nov 3, 1970, Senkus to Vassallo; 50199 0368 - 0369	426
	3516	Inter-Office Correspondence, Nov 12, 1971, Saleeby to Wakeham; 1000255276-278	436
	3517	Inter-Office Memorandum, Dec 22, 1971, Senkus to Vassallo; 50050 0668 - 0669	439
	3518	Letter of Feb 20, 1974, Homburger to Gardner; 50365 4905 - 4906	447
	3519	Confidential Memorandum of Apr 22, 1974, LSZ to Henry-Tom, LG 0020438-440	449
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P R O C E E D I N G S

(Witness previously sworn.)

EMANUEL RUBIN, M.D.,

having been called as a witness and having been previously duly sworn, testified under oath as follows:

EXAMINATION

BY MR. GILL:

Q. Now Dr. Rubin, of course you recognize you're still under oath?

A. I assume I am. But I always tell the truth anyway, so it makes no difference.

Q. That's good to know.

Dr. Rubin, we were discussing yesterday the Frank Statement, Exhibit 3500. We respect to the various assurances that are contained in the Frank Statement are you aware of any point in time in which any of the signatories to the Frank statement withdrew or revoked any of those assurances?

MR. ALLINDER: Object to the form.

A. I don't know anything about that.

Q. In all the documents that you've looked at you haven't seen any documents that appear to revoke or withdraw any of the assurances that were contained in the Frank Statement?

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MR. ALLINDER: Object to the form.
Q. True?
A. I haven't read such documents.
Q. Do you have an understanding of how the idea for a tobacco industry review committee came about?
MR. ALLINDER: Dick, Tobacco Industry Research Committee.
Q. Research Committee.
MR. ALLINDER: That's okay.
A. It's my understanding that the Frank Statement speaks for itself, that information had become available to the effect that smoking cigarettes had adverse health consequences and that the various companies joined in an effort to set up a -- an organization that would respond to these problems by subsidizing or funding research in these areas.
Q. So that this organization, the tobacco industry review committee, would be performing --
MR. ALLINDER: Excuse me.
Q. -- work in the public interest?
MR. ALLINDER: Dick, Research.
MR. PURDY: You misspoke again, counsel.
A. They would -- they would fund work performed by others that if one considers biomedical research to be in the public interest, which I do, then indeed

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it's in the public interest.
Q. So the mission of the organization that was being created by the tobacco companies would be to sponsor research in the public interest?
MR. ALLINDER: Object to the form.
A. I think that's fair.
Q. Now in your reading of the Frank Statement, is there any suggestions as to any other type of work that this new organization is going to address or perform?
MR. ALLINDER: Object to the form.
A. It speaks of research effort, it speaks of research activities. That's all I can read into it.
Q. It doesn't mention any other type of work that this organization is going to be dedicated to?
MR. ALLINDER: Object to the form.
A. I don't see any mention of other types of work.
Q. Are you familiar with a public relations firm by the name of Hill and Knowlton?
A. I've heard the name, but I know very little about it.
Q. Have you come across references to the public relations firm of Hill and Knowlton in any of the many documents that you've reviewed in connection with this case or any other tobacco case that you've

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been working on?
A. Yes, I have.
Q. And what's your understanding of the relationship between Hill and Knowlton and the Tobacco Industry Research Committee?
A. It may be that Hill and Knowlton recommended to the tobacco companies that it would be appropriate to respond public concern with the formation of a research committee such as TIRC, but I think I've just about exhausted my knowledge.
Q. Do you recall that Hill and Knowlton actually came up with the name Tobacco Industry Research Committee?
MR. ALLINDER: Object to the form.
A. I don't recall exactly, but I wouldn't contest the point.
Q. So it was a public relations firm as you understand it that came up with the idea of forming the Tobacco --
MR. ALLINDER: Object to the --
Q. -- Industry Research Committee?
MR. ALLINDER: Object to the form.
A. I am not sufficiently aware of all of the details, whether they were the initiators of it or whether they were responding to suggestions by other

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people from the industry, whether it was a joint effort, I'm not really intimately aware of these relationships.

Q. Have you reviewed documents in this case or other tobacco cases that indicated or implied that the Tobacco Industry Research Committee was viewed by Hill and Knowlton and members of the industry as a public relations matter?

A. All I remember is that there were consultations with the public relations firm and some may have viewed it in one way and others may have viewed it in another way. I really can't get into the minds of all of those people at the time. I just don't know enough about it and I haven't spoken with them.

Q. Recognizing you haven't spoken with anybody and also that you can't get into their minds, based upon documents that you've reviewed, however, I take it it's clear to you that some members of the industry viewed the Tobacco Industry Research Committee as a public relations organization?

MR. ALLINDER: Object to the form.

A. That may be. I -- I would have to have all of the documents in front of me to review them.

Q. Did you take note of -- of that type of implication in any of the documents that you've

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reviewed?
A. That issue is not of great concern to me personally because I'm interested not so much in motivation and psychology as I am in the facts. I view my charge as analyzing the work, the activities, the output of CTR and determining in my own mind, based on my own analysis, whether the allegations regarding CTR are true or false.
Q. Well do you understand that one of the allegations brought by the State of Minnesota and Blue Cross Blue Shield in this case is that CTR operated as a public relations front for the tobacco industry?
MR. ALLINDER: Object to the form.
A. The way to determine whether --
Q. Do you understand that that's one of the allegations?
A. I believe it is.
Q. And you're saying that you haven't really focused your investigation on that particular allegation?
MR. ALLINDER: Object to the form.
A. That's not true. The proof -- let me backtrack. An allegation may be true, partially true, or false. To determine the facts in this case,

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it is necessary to analyze what the CTR did, how did it operate, to whom did it give grants, what were the nature of the grants, what type of papers appeared, et cetera, et cetera, and we have gone through these issues before. Idle speculation about motivation will not get us anywhere. The facts will speak for themselves. And I have concentrated my efforts in determining not speculation but in analyzing the hard facts of the record.

Q. And have you specifically looked for some hard facts in the record indicating that members of the tobacco industry viewed the Tobacco Industry Research Committee and later CTR as a public relations front for the tobacco industry?

MR. ALLINDER: Object to the form.

A. How those people viewed it is irrelevant to me. What is important to me is what kind of an organization was it, how did it operate, did it operate according to general principles that are applicable to grant-funding agencies. In other words, some people may view the National Institute of Health as a front for the United States government. There may be such people who view it that way. There may be people who are opposed to health research, the animal rights movement people who would view the NIH

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as a cover-up for who knows what. But you cannot determine the truth or falsity of these allegations simply by examining how these people view the NIH. If you really want to know is the NIH a cover or a front for the activities of the United States government, you would then have to examine what the NIH does, how it does it, what's the output, et cetera. I view --

Q. And what it publicly says, what it says in public statements?

MR. ALLINDER: Excuse me. Were you done with your last answer?

THE WITNESS: No, I really wasn't.

MR. ALLINDER: You have an opportunity to finish.

Q. Go ahead.

A. Now I would apply the same standard to the American Cancer Society, the American Lung Association, I would apply the same standard to the CTR. What some tobacco executive thought about it or what he said about it is irrelevant, what he thought or said may have been true, may not have been true, may have been his own opinion. What counts is what did CTR do.

Q. Did you have --

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A. That's where I'm coming from.
Q. Would you have the same opinion that it's irrelevant as far as you're concerned what members of management of CTR thought about the public relations role of that organization?
MR. ALLINDER: Object to the form.
A. Every organization that I'm aware of has a public relations role, and that applies to the most esteemed, voluntary health organizations in the country. While I'm not intimately familiar with the operations of the American Cancer Society, it -- or say the March of Dimes which is into birth defects these days, it is my understanding that they produce brochures, that they have public relations operations, that they have press releases, that they have people who are committed to enlarging or enhancing the reputation of the organization and its sponsors. What you're talking about is in my opinion par for the course of virtually all organizations that provide grants for research.
Q. Does the public relations work of the American Cancer Society serve to advance the interests of any particular industry as far as you know?
A. As far as I know the answer is no.
Q. And there's nothing in the Frank Statement that

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would suggest to readers that the work of the TIRC would be to advance the interests of the tobacco industry?

MR. ALLINDER: Object to the form.

Q. True?

A. Let me go back to the last question about whether the American Cancer Society --

Q. I'd like you to please answer this question.

A. Well then please repeat it because I had my mind on the last question which I answered incompletely.

Q. Do you see anything in the Frank Statement, Dr. Rubin, that would lead a reader to believe that the work of the TIRC would be to advance the interests of the tobacco industry?

MR. ALLINDER: Objection.

Q. As opposed to the public interest?

MR. ALLINDER: Objection.

A. Well you're asking me to assume in there that the public interest is necessarily different or a priority different from the interests of corporations; that is, there is an implicit assumption that anything that is good for a corporation is bad for people, and vice versa, and that happens to be the view of many people who are inclined toward socialism or communism, but in my

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view is not necessarily the case. Now one could be extreme, such as -- what is his name -- Engineer Charlie Wilson said who said "What's good for General Motors is good for America." Well in some ways it was true as a matter of fact, although he came under a lot of criticism for it.

Q. Do you think what's good for the tobacco companies of America is good for America?

A. Well in some ways. In some ways.

Q. How about with respect to whether cigarettes cause cancer --

A. Well why can't I finish my question.

MR. PURDY: Yeah, Dick, let him --

MR. ALLINDER: Dick, don't run over him, please.

Q. Go ahead, Dr. Rubin.

A. In some ways it really is. It provides employment. It provides income for tobacco farmers. It gives the state and federal government a substantial amount of money in taxes. The -- provides a share of the income for stores that sell it. So in some ways what's good for the tobacco companies is good for America. The price in the case of tobacco happens to be that it has adverse health effects, and people who smoke tobacco are at

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substantially higher risk of developing a variety of diseases. So in some ways, you might say from an economic point of view, it's good for America. From a health point of view it's not good for America.

Q. Now do you think that smokers are more concerned about their health or the tobacco industry's economic welfare?

MR. ALLINDER: Object to the form.

A. I think it depends on the smoker. There are some smokers who are so concerned about their health they stop smoking. There are many smokers, most smokers who are fully aware of the health risks and are willing to assume those health risks because they enjoy tobacco enough so that the cost -- the risk-benefit ratio is acceptable to them.

Q. But do you think that those smokers are more concerned about the economic interests of the tobacco companies than they are about their own health?

A. No, I --

MR. ALLINDER: Object to the -- excuse me. Object to the form.

A. I doubt that smokers when they smoke are thinking about the benefits that they are going to --

Q. Confer upon the tobacco industry?

A. -- confer upon the tobacco industry by buying

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their product. It doesn't seem likely, any more than a person would buy a Ford in order to enhance the profits of the Ford Motor Company.

Q. If in fact smoking causes cancer and cardiovascular problems, as you believe, then it would not be in the public interest for those products to be consumed at the same rate that they were previously consumed; true?

MR. ALLINDER: Object -- object to the form.

A. I think it would be better for public health if people did not smoke.

Q. So in that sense it would -- the public interest with respect to improving public health would conflict with the interests of the tobacco companies to sell more cigarettes; --

MR. ALLINDER: Object --

Q. -- true?

MR. ALLINDER: Object to the form.

A. I think that's unobjectionable.

Q. Now do you find anything in the Frank Statement that would suggest to the public that TIRC is going to be advancing the economic interests of the tobacco companies at the expense of the public interest in knowing about the dangers of smoking?

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MR. ALLINDER: Object to the form.

A. The Frank Statement does not go into that arena at all. The Frank Statement in announcing the TIRC has too many points. One is that it is a response to the discovery of adverse health effects of tobacco, and that it will deal with research into the relationship of tobacco and health. Those are, as I see it, the two main points of the statement with regard to the establishment of the TIRC.

Q. So you're answering my question in the affirmative, there is no suggestion to the public in the Frank Statement that the work of the TIRC would be to advance the economic interests of the tobacco company?

A. The economic --

MR. ALLINDER: Excuse me. Object to the form.

THE WITNESS: I'm sorry.

MR. PURDY: And let me, counsel, yesterday -- and I don't want to be jumping in because we don't need two voices here, but yesterday you permitted me a continuing objection on the grounds that the documents speak for themselves. May I have that today?

MR. GILL: Yes, you can.

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MR. PURDY: Okay.

A. The economic interests of the tobacco companies are not mentioned in the Frank Statement.

Q. And if smoking does cause cancer and other cardiovascular problems, then in that respect the public interest would be at odds with the economic interests of the tobacco companies?

MR. ALLINDER: Object to the form.

Q. True?

A. Well, this is a general statement not related to TIRC. In general the more cigarettes that are sold, I assume the more the profits of the tobacco companies. Presumably the less people smoke the less they will suffer the adverse consequences of tobacco smoking. So there is a -- a conflict or a contradiction in that arena.

(Plaintiffs' Exhibit 3501 marked for identification.)

Q. Let me show you Exhibit 3501, Dr. Rubin. This is a two-page press release. It's among the documents that were pre-designated. Have you reviewed it prior to today?

A. I believe I've seen this, yes.

Q. It's dated June 22, 1954?

A. It is indeed.

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Q. Okay. Approximately six months or so after the TIRC was created, just for context.
A. Okay.
Q. True?
A. I don't remember the exact date of the Frank Statement, but I'm willing to take your word for it.
Q. And do you see that this press release was apparently prepared by Hill and Knowlton, the public relations firm? It's on the left margin of page 1.
A. The left margin says Hill and Knowlton, Inc.
Q. All right. And this particular press release has got a number of quotes in it from Dr. Clarence Little, the scientific director of the TIRC; correct?
A. It quotes Dr. Little in a number of respects.
Q. If you'd look at page 2. In the next to last paragraph Dr. Little is quoted as stating, "The origin, nature, and development of cancer and of cardiovascular disease are complex problems, offering the greatest existing challenge to creative scientific thought and to further experimentation wisely conceived, patiently executed, and fearlessly and impartially interpreted in our search for the truth." Did I read that correctly?
A. You did.
Q. Do you agree that that would be a --

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A. Actually an eloquently --

MR. ALLINDER: Excuse me, Dr. Rubin, you need to let him finish answering his question -- or asking his question.

Q. Do you agree with the premises that the TIRC's sponsorship of research should first of all be wisely conceived?

A. Yes.

Q. That it should be patiently executed?

MR. ALLINDER: Object to the form.

A. Yes.

Q. And would that be because sometimes the initial study advances the ball so far but it's necessary to patiently follow up on the results of an initial study in order to maximize the benefit from that research?

MR. ALLINDER: Object to the form.

A. That's --

Q. In terms of advancing the public interest.

MR. ALLINDER: Same objection.

A. That is one of the virtues of patience. Patience is a virtue in many situations. And it also applies to the execution of an individual research project quite apart from following up a research project. It is almost the rule that at the beginning

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of a research project obstacles are encountered. If it's a laboratory experiment it turns out that the reagents are not entirely appropriate or that they are contaminated with something or that the time used for the experiment is wrong, whatever it is, and patience is required to refine the methodology to the point where one has confidence in it. So that is one virtue of patience that it allows you to come to accurate conclusions.

Q. And do you --

A. Following that, if one wishes to follow up a finding in the public interest and in the interests of biomedical research, patience is also a virtue in planning and executing further experiments or studies, so --

Q. Which of course would require funding?

A. It all depends.

Q. In the context of the work that the TR -- TIRC is going to address.

A. Yes.

Q. All right. And do you also agree with the concept that the research sponsored by the TIRC should be fearlessly and impartially interpreted in its search for the truth?

MR. ALLINDER: Object to the form?

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A. I think that that is a good rule of thumb.
Q. Now in the final paragraph on page 2 of Exhibit 3501 Dr. Little is quoted again; correct?
A. Yes, there are quotes.
Q. And he's indicating there that the Tobacco Industry Research Committee has unqualifiedly given to its board of directors and to the present director of research complete freedom of thought and action?
MR. PURDY: You actually misspoke, but the document speaks for itself.
Q. Well let me try it again, so that we have a clear record.
Does the first sentence of the last paragraph state, quote, "The Tobacco Industry Research Committee has unqualifiedly given to its Board of scientific advisors and to the present Director of Research complete freedom of thought and action?" End of quote.
A. That's how I read it.
Q. And the Tobacco Industry Research Committee of course is an organization owned by the cigarette companies?
MR. ALLINDER: Object to the form.
Q. True?
A. As I told you yesterday, I am not familiar with

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the legal aspects of ownership.
Q. But --
A. But it is certainly sponsored by them and funded by them.
Q. All right. And -- and paid for by the tobacco industry?
A. That's correct.
MR. ALLINDER: Object to the form.
Q. And it's at least your understanding that the tobacco industry puts its members on the board of directors of the TIRC?
MR. ALLINDER: Object to the form.
A. Yes.
Q. Now this is saying then that the tobacco industry through this TIRC organization has given to its director of research complete freedom of thought and action, and that would be Dr. Little?
MR. ALLINDER: Object to the form.
Q. Correct?
A. Correct.
Q. So the tobacco industry has given to one of its employees, Dr. Little, complete freedom of thought and action?
MR. ALLINDER: Object to the form.
Q. Correct?

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A. That's what it says.
Q. And it is complete freedom of thought and action in order to determine if smoking causes cancer and other diseases?
MR. ALLINDER: Object to the form.
A. Well it's a little more than that.
Q. But it's at least that, isn't it?
A. Yes. Well -- if it causes it and how it causes it.
Q. All right. And in terms of this complete freedom of thought and action, this employee of the tobacco industry is in a conflict of interest situation; true?
MR. ALLINDER: Object to the form.
A. I don't think so. I --
Q. Well if in exercising complete freedom of thought and action he publishes information that smoking does cause cancer and other diseases, that would be information that would be contrary to the interests of his employers; true?
MR. ALLINDER: Object to the form.
A. The answer is true, but the commitment was made to recruit a director of unimpeachable integrity and stature in the scientific community, and for that purpose they recruited Dr. Clarence Little who was

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one of the most eminent American men of science at the time and a member and former officer of the National Academy of Science which is one of the highest honors that can be gained by a member of the scientific community. In addition to that he had many other honors, he was one of the foremost scientists, fiercely independent person at that time. It is inconceivable that the tobacco companies or anyone else could have influenced Dr. Little, a man of his stature and integrity, in the interpretation or dissemination of any scientific data. So although there might be an apparent conflict of interest in a narrow sense that the scientific information might be at odds with the economic interests of the companies, there -- the recruitment of Dr. Little assured that the apparent conflict was not a real conflict given Dr. Little's integrity and stature in the field.

Q. Assuming he was actually of unimpeachable integrity.

A. To my knowledge Dr. Little was such a person and he was widely recognized as such a person in the scientific community and is also evidenced by the fact that he was able to recruit a Scientific Advisory Board of exemplary physicians widely

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representative of American science who would never have joined the Scientific Advisory Board if they did not have full confidence in his integrity and dispirited -- sorry -- disinterest in the results of the studies.

Q. Well the Frank Statement indicates that the members of the Scientific Advisory Board would be disinterested in the cigarette industry. We talked about that yesterday. Do you recall?

A. Yes, we did.

Q. It doesn't make that statement specifically about the scientific director, does it? It refers to a scientific director of unimpeachable integrity?

A. And national repute.

Q. But makes no claim that the scientific director would be disinterested in the cigarette industry?

MR. ALLINDER: Object to the form.

A. By implication it does.

Q. But the scientific director would be paid directly through funds provided by the cigarette industry; true?

A. A man of Dr. Little's integrity and accomplishments could hardly be corrupted by the source of his income.

Q. That would be very good if that were true;

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correct?

A. Well if there is any evidence of corruption on the part of Dr. Little, I am of the opinion that it should be brought out and made public, otherwise we are besmirching the posthumous reputation of a great man, and I think that even the requirements of the legal process should be very careful about doing something with such unpleasant consequences for the memory of a distinguished scientist.

Q. And you don't make that statement as an advocate, do you?

MR. ALLINDER: Object to the form.

A. I am not an advocate. I think that this is true in general and has -- and has applicability in general to considerations far removed from the tobacco considerations. "De mortuis nil nisi bonum" is not a bad policy unless one has very specific and incontrovertible evidence to the contrary.

MR. GILL: Would you mark this, please.

(Plaintiffs' Exhibit 3502 marked for identification.)

Q. Let me show you what's been marked, Dr. Rubin, as Exhibit 3502. Do you recognize this as another of the documents that you reviewed in preparation for your deposition?

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MR. ALLINDER: Object to the form.

A. I have some recollection of having looked at it.

Q. This is another press release issued by the Tobacco Industry Research Committee; correct?

A. It's issued from Hill and Knowlton is what it says on the left.

Q. And do you understand that it served as the public relations firm for the Tobacco Industry Research Committee?

MR. ALLINDER: Object to the form.

A. It says for Tobacco Industry Research Committee, and it's a statement by Timothy Hartnett, Chairman of the Tobacco Industry Research Committee.

Q. And it indicates that it's for release in year-end editions but not before December 27, 1954; correct?

A. That's what it says.

Q. Does this suggest to you that this is a press release that Hill and Knowlton proposed the TIRC should issue?

MR. ALLINDER: Object to the form.

A. That's a reasonable interpretation.

Q. And Mr. Hartnett who was the chairman of the TIRC at the time was a former president of a tobacco company?

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MR. ALLINDER: Object.

Q. Or was he a current president of a tobacco company?

MR. ALLINDER: Object to the form.

A. I don't know.

Q. You don't know anything about the relationship between Mr. Hartnett -- Hartnett and the tobacco industry?

MR. ALLINDER: Object to the form.

A. I don't know.

Q. Take a look at the Frank Statement again if you would, Dr. Rubin, Exhibit 3500?

MR. ALLINDER: Dick, you've got it.

MR. GILL: I'm sorry.

MR. ALLINDER: That's all right.

BY MR. GILL:

Q. Where the sponsors have signed the Frank Statement in the first column, do you see who signed it for Brown & Williamson Tobacco Company?

A. Timothy V. Hartnett, President.

Q. So about a year later, assuming the Frank Statement was issued in around January of 54, by December of 54 apparently this same Timothy Hartnett is now the chief executive officer of the TIRC?

MR. ALLINDER: Object to the form.

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Q. Does that appear to be the case?

MR. ALLINDER: Same objection.

A. It says chairman.

Q. Chairman, and chief executive officer assumedly?

MR. ALLINDER: Object to the form.

A. I -- I only go according to what I read, Chairman.

Q. All right. In the second paragraph of page 1 of Exhibit 3502 the -- the press release indicates that "This is one measure of the strides made by the Tobacco Industry Research Committee toward fulfilling its pledge to the American public made last January. That pledge was to sponsor independent scientific research into tobacco use and health and to make the facts known to the public." Did I read that correctly?

A. You said "American public". It reads "American people". Other than that, I think you're correct.

Q. Thank you for that -- for that correction.

Now is -- the paragraph that I just read, is that a -- a reference back to pledges made in the Frank Statement?

MR. ALLINDER: Object to the form.

Q. Assuming the Frank Statement was in -- was issued in January of 1954.

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MR. ALLINDER: Object to the form.

A. This refers to the money that was appropriated to support the activities and establishment of the TIRC.

Q. Okay. All right. And it refers to -- in the first sentence of that paragraph it refers to money pledged to fulfill a pledge made to the American people last January, and that would be in the Frank Statement; correct?

MR. ALLINDER: Object to the form.

A. I think so.

Q. And then it goes on to say, referencing the Frank Statement again, "That pledge was to sponsor independent scientific research into tobacco use and health and to make the facts known to the public." Now is -- is that statement consistent with your understanding of a pledge contained in the Frank Statement?

MR. ALLINDER: Object to the form.

A. I think it's reasonable, yes.

Q. Now going back to the first paragraph on page 1 of Exhibit 3502, there is a reference to the sponsorship money that had been contributed by the tobacco industry during that first year of operation. Do you see that?

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A. I do.
Q. A quarter of a million dollars.
A. Yes.
Q. That would be a pittance with respect to the operating revenues of the tobacco industry back in 1954; true?
MR. PURDY: Object to the form.
A. I have no knowledge of the income of the tobacco industry.
Q. Would you expect that the revenues of the tobacco industry back in 1954 amounted to many hundreds of millions of dollars?
MR. PURDY: Object to the form.
A. I'll take your word for it.
Q. You wouldn't be surprised if that were the case, would you?
A. Nothing surprises me.
Q. All right. And if in fact the operating revenues of the sponsors of the TIRC amounted to several hundred million dollars or more back at that time, then a quarter of a million dollars would be a very, very minute fraction of such an amount; true?
A. In absolute terms that would be -- assuming your statements to be correct, would be a very small part, but it also betrays a lack of understanding of the

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nature of biomedical research. To throw money at a problem prematurely is simply to waste the money. In establishing a grant program it is necessary, first of all, to go through a period of organization and publicity to the wider biomedical research community of the availability of grants, the format in which grant applications should be prepared, and there is inevitably a lag period before people become aware of the funding opportunities and are able to formulate grant applications. In that context this amount of money should be looked upon as start-up or organizational money. Within a period of one year it simply would not be possible to elicit the submission of a large number of credible grants in the field from investigators in the country.

Q. So you would expect the amount of funding to increase drastically over the ensuing years?

MR. ALLINDER: Object to the form.

A. "Drastically" is a difficult word. The amount of funding I would expect would increase as the number of applications increased and as the interest of the biomedical research community became stimulated by the presence of this funding source. I do not believe that it is possible to predict the time line of applications to the TIRC or to any other

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new funding agency.

Q. Given the gravity of the health risk imposed by cancer and cardiovascular disease, would you expect that the tobacco industry, once the TIRC was up and running and investigators were submitting their research applications, would be providing, what, in the nature of say 1 percent of their revenues to cover this important work?

MR. ALLINDER: Object to the form.

A. I'm not an expert in the economics of the tobacco industry or how -- how much is a reasonable contribution in terms of their revenues. I simply --

Q. Let me just --

A. I've never examined the issue.

Q. Let me just ask you to assume that throughout the entire period of time between 1954 up through today that the tobacco industry has been very profitable. With that assumption, and certainly you regarded cancer as a grave situation?

A. I do not recommend it to people.

MR. ALLINDER: Excuse me. Excuse me. You need to let him finish asking the question.

THE WITNESS: I thought he was finished.

MR. ALLINDER: I don't think so.

THE WITNESS: Forgive me.

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MR. ALLINDER: I don't think so. Let him finish.

BY MR. GILL:

Q. So given the assumption of profitability, given the gravity of the threat posed by cancer, would one percent of operating revenues of highly profitable companies seem like a reasonable amount to set aside to fund such important research in the public interest?

MR. ALLINDER: Object to the form.

A. I think the question should be better addressed to an economist than to an investigator such as myself.

Q. Well over the years I assume that you and your wife have attempted to set aside a certain portion of your family income for charitable purposes?

MR. ALLINDER: Object to the form.

A. We do.

Q. And in -- in determining what is a reasonable amount to give, I take it you in some way consider the amount of income that you have to start with?

A. You're correct.

Q. And for someone to give 1 percent of their income to charity, assuming that they're a comfortable person in terms of income, that would not

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be an unreasonably large portion of someone's income to contribute to a charitable purpose, would it?

MR. ALLINDER: Excuse me. Let me just object to this line of questioning because, counsel, I believe you're going very far afield and these same sorts of questions are of a far more personal nature and were objected to when they were basically inadvertently asked of one of your experts, and I -- so I'm going to object to the form. I don't -- I think this is getting very far afield.

MR. GILL: Object to the form is fine, thank you.

Q. Is that true, Dr. Rubin, 1 percent of the income of a comfortable person from an inc -- from an income standpoint would not be an unreasonably large portion of their income to contribute to worthy causes; true?

MR. ALLINDER: Objection.

A. I don't consider that unreasonable. I think many people would say it's niggardly.

Q. All right. And certainly if the tobacco industry sincerely was going to put the health of its customers in a paramount position to its own economic interests, contributing 1 percent of the revenues of profitable tobacco companies to fund research in the public interest, that would not be an unreasonable

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thing, would it?

MR. ALLINDER: Objection.

MR. PURDY: Object to the form.

Argumentative.

A. I am really not acquainted with the research and development budgets of corporations and what the ratio of charitable contribution is to the needs, say, of the shareholders. It's a complex area, and I am simply not a person who has any particular knowledge of what is appropriate for a corporation to do. I'm not being evasive, I simply have never ventured into that area.

Q. But clearly the tobacco companies assured the smoking public that -- that they would put the needs of the smoking public ahead of the earnings of their shareholders?

MR. ALLINDER: Object to the form.

Q. True?

A. They said it was "paramount" is the word they used.

Q. To every aspect of the tobacco companies' business --

MR. ALLINDER: Object to the form.

Q. -- or words to that effect; correct?

MR. ALLINDER: Objection.

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A. They say paramount to every other consideration in our business.

Q. And certainly one of the considerations of the tobacco companies' business would be the earnings of their shareholders?

A. That's an important consideration for a corporation.

(Plaintiffs' Exhibit 3503 marked for identification.)

Q. Would you take a look at Exhibit 3503, Dr. Rubin. This is a two-page memorandum dated April 9, 1962 from J. H. Brady -- or J. M. Brady to C. C. Little. Have you reviewed this document in preparation for your deposition?

A. I have looked at it, but I'm not intimately acquainted with its contents.

Q. It's a short document and I take it you had no trouble reviewing it and understanding it. It's apparently --

MR. ALLINDER: Object to the form.

A. It's in the English language with which I'm familiar.

Q. Now the C. C. Little to whom this memo is addressed would be Clarence Cook Little?

A. I would assume.

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Q. And do you know who J. M. Brady is?
A. No, sir.
Q. Did you ever come across his name in any of the documents you reviewed?
A. I may have, but I don't have the documents in front of me, and my memory fails me.
Q. I want you to assume that J. M. Brady was an associate director of TIRC or CTR at this time in April 1962. All right?
MR. ALLINDER: Object to the form.
A. I will assume that.
Q. And certainly in the very first paragraph of Exhibit 3502 there is an indication that the author has been with TIRC almost two years; do you see that?
A. I do.
COURT REPORTER: 3503 I believe.
MR. GILL: I'm sorry, 3503. Thank you.
Q. The author indicates to Dr. Little that he's going to attempt to clarify his feelings about the TIRC program, past, present, and future; correct?
A. Yes, sir.
Q. Now in the -- in the next paragraph Mr. Brady indicates that, quote, "Historically, it would seem that the 1954 emergency was handled effectively. From this experience there arose a realization by the

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tobacco industry of a public relations problem that must be solved for the self-preservation of the industry." Did I read that correctly?

A. You did.

Q. Now do you know what emergency -- do you have an understanding of what emergency Mr. Brady is apparently referring to back in 1954?

A. I believe the emergency that he refers to is the dissemination of information regarding the adverse health consequences of tobacco smoking.

Q. So it was an emergency from the perspective of the tobacco industry?

MR. ALLINDER: Objection.

A. I believe that's true.

Q. And probably an even greater emergency from the perspective of smokers if in fact cigarettes cause lung cancer?

A. I don't object to that.

Q. Then Mr. Brady indicates that based upon the experience of that emergency a realization arose in the tobacco industry that there was a public relations problem that had to be solved for the self-preservation of the industry. Now is it your understanding that the formation of TIRC was part of the solution to this public relations problem?

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MR. ALLINDER: Object to the form.
A. This is Mr. Brady's view as expressed in this memorandum that at least part of the -- that some part of the motivation behind the establishment of the TIRC reflected a need to respond to a public relation problem.
Q. All right. So now we have someone who is an official with the TIRC indicating in a private internal memo to his boss that he perceives the TIRC to have been formed in part for public relations reasons?
MR. ALLINDER: Object to the form.
Q. True?
MR. PURDY: And again, just before you answer, Doctor, counsel, may I have a continuing objection that the document speaks for itself?
MR. GILL: Yes, you may.
MR. PURDY: All right.
BY MR. GILL:
A. He doesn't say it in so many words, but there is an implication that the public relations problem played some role in the decision to establish a TIRC.
Q. And there's the implication that some portion of the role of TIRC is to perform a public relations function for the tobacco industry; true?

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A. It doesn't say that.
Q. Isn't that implied as well?
A. Well the implication is that if the tobacco industry carries through with its plans to establish a research committee composed of eminent and disinterested scientists that this would be looked upon favorably by the public.
Q. Now he also points out in the third paragraph of page 1 of Exhibit 3503 that the operating principles of TIRC were outlined with humble but magnificent judgment, and that a small amount of money was allocated to find out certain things. True?
A. That's what it says.
Q. Now would the initial funding of research in 1954 of approximately a quarter of a million dollars, would that be consistent given the nature of the revenues of the tobacco industry with a small amount of money being allocated?
MR. ALLINDER: Object to the form.
A. I think this is accurate that the small amount of money was allocated to find out the new approaches and the application of new or old techniques; in other words, what they were doing is identifying the areas to be studied and the techniques that would be necessary to study them in anticipation of a larger

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grant program. You have to start somewhere, and that seems to me to be a reasonable way to start.

Q. Mr. Brady is implying that for the small amount of money that was allocated the industry got a large bang out of their bucks?

MR. ALLINDER: Object.

Q. True?

MR. ALLINDER: Object to the form.

A. Those are your words.

Q. That's a fair --

A. That's not what he says.

Q. That's what he implies; does he not?

MR. ALLINDER: Object to the form.

A. I don't see that myself.

Q. The next paragraph reads, "To date, the TIRC program has carried its fair share of the public relations load in providing materials to stamp out the brush fires as they arose." Did I read that sentence correctly?

A. You did.

Q. So from Mr. Brady's perspective, and assuming he's a member of management of the TIRC, it has been carrying a fair share of the public relations load for the tobacco industry; correct?

MR. ALLINDER: Object to the form.

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A. I think that's a reasonable interpretation.
Q. And the TIRC has been providing materials to stamp out brush fires that might engulf the industry; true?
MR. ALLINDER: Object to the -- object to the form.
A. Well I don't know. It says brush fires as they arose. And the truth of the matter is I -- I don't know what he's referring to.
Q. Well the TIRC itself didn't have to be concerned about brush fires but the tobacco industry did; true?
MR. ALLINDER: Object to the form.
A. I assume. I don't know what he means by brush fires. He doesn't really explain, and it may have been some kind of jargon that --
Q. You're familiar with --
A. -- people involved there understood. I don't know what those brush fires were.
Q. But you're familiar with the term "brush fires"?
A. I am indeed.
Q. A small fire that if not contained may grow into a much larger and more serious conflict, conflagrat -- conflagration?
(Reporter interruption.)
MR. ALLINDER: You're going to be spelling

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during breaks too.

MR. PURDY: Object to the form.

MR. MARTIN: Big fire.

Q. You understood my question; did you not, Dr. Rubin?

A. I think that's a reasonable way of looking at it. There may be some other definitions of brush fires, but that's not unreasonable.

Q. Then Mr. Brady does go on to explain a bit about his references to the brush fires, doesn't he? Doesn't he, Dr. Rubin?

A. I don't see where he mentions that again.

Q. Well he does say that while effective in the past, this whole approach, apparently that's a reference to the public relations approach; true?

A. I think it's the -- the approach of the TIRC in supporting research.

Q. Well he's talking in this paragraph about the TIRC carrying its fair share of the public relations load, isn't he?

A. I'm not sure.

Q. He doesn't mention research in this paragraph, does he?

A. He doesn't mention research, but I would interpret that this whole approach refers to the

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overall operations of the TIRC.

Q. So that the overall operations of the TIRC certainly did include a public relations component?

A. I would assume so.

Q. On behalf of the tobacco industry?

A. Presumably.

Q. Whose interests were in conflict with the public's interest if cigarettes caused lung cancer?

MR. ALLINDER: Object to the form.

A. I think that's simplistic. The -- the situation at that time was unclear. There was a legitimate controversy regarding certain aspects of cigarette and health, and at that time, for instance, there were some people who believed that it might be possible to eliminate some compound in tobacco that was causing cancer, so that the interest of the tobacco companies in removing or finding out what the compound is and removing it might be congruent with the interests of the public in continuing to smoke and not being exposed to the dangers of tobacco. There's a much more fluid situation at that time than exists today.

Q. That's why I said if cigarettes caused lung cancer, then the interests of the public were inconsistent with the interests of the cigarette

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industry to sell those very cigarettes; true?
A. In the sense --
MR. ALLINDER: Object -- excuse me. Object to the form.
A. Well in the sense that people would stop smoking cigarettes and that the profits of the companies would decline, then clearly there's a problem.
Q. Well let's go back to this sentence we were talking about. It reads, quote, "While effective in the past, this whole approach requires revision and expansion. The public relations problem created by Hammond et al. was like the early symptoms of diabetes - certain dietary controls kept public opinion reasonably healthy. When some new symptom appeared, a shot of insulin in the way of a news release, a Berkson antidote, a Rosenblatt television rebuttal, et cetera, kept the patient going." Did I read that correctly?
A. You did.
Q. Now he's -- Brady's drawing an analogy here with respect to the use of insulin for a diabetic to shots of favorable public relations to stem a public concern?
A. There's sort of a mixed metaphor here. He is talking about insulin in diabetes. Actually to stamp

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out brush fires is a -- it's a sort of a mixed metaphor here, --

Q. But you --

A. -- but I get the message.

Q. You recognize his reference to Hammond and public relations problems created by Hammond; do you not?

A. Yes.

Q. Hammond was a very esteemed scientific investigator; was he not?

A. He was and is an epidemiologist.

Q. Of high repute; true?

A. I believe so, yes.

Q. And during the 1950s and probably into the 60s Hammond continued to publish the results of epidemiological studies that implicated smoking with cancer and other diseases; true?

A. That is true.

Q. In fact Hammond issued one of the epidemiological studies that gave rise to the formation of the Tobacco Industry Research Committee back in 1954; true?

A. I --

MR. ALLINDER: Object to the form.

A. I think that is true.

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Q. Now it would be a disservice to Dr. Hammond's epidemiological studies to reference them as simply public relations; true?

MR. ALLINDER: Object.

A. I --

MR. ALLINDER: Excuse me. Object to the form.

A. He's not doing that. He's saying that the data or the reports of Dr. Hammond created a public relations problem for the industry. He -- he is not referring to Dr. Hammond's reports as public relations, he's -- there's a difference.

Q. But he sees the Hammond reports only through the eyes of the effect that they have on the industry; correct?

MR. ALLINDER: Object to the form.

A. In this memorandum he is referring to a public relations problem. He is not commenting on the entire arena of research in the area.

Q. But he treats Hammond research conclusions not necessarily as things the industry has to address with respect to changing its products, but merely as creating a public relations problem for the industry; true?

MR. ALLINDER: Object to the form.

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A. That is true. This memorandum is concerned with the public relations problem created by reports by Dr. Hammond.

Q. Now assuming Hammond's studies reached valid conclusions, and you certainly believe that they did; correct?

MR. ALLINDER: Object to the form.

A. You're correct.

Q. Okay. The Hammond studies were far more than simply a public relations matter for smokers, they were a cause of legitimate health concern; true?

MR. ALLINDER: Object to the form.

A. I think they created a legitimate health concern.

Q. And any attempt to treat the conclusions of the Hammond research as merely a public relations situation would certainly trivialize those very important results?

MR. ALLINDER: Object.

Q. True?

MR. ALLINDER: Object to the form.

A. The memorandum by Brady does not say it is merely a public relations problem. Presumably he is dealing with one aspect of those reports and the consequences of those reports with respect to the

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public relations problem that it created for the industry.

Q. But he says that by them employing some public relations responses TIRC was able to keep public opinion reasonably healthy.

A. That's what it says.

Q. So when the need arose, Brady indicates that to keep public opinion reasonably healthy TIRC would issue a press release. That's one of the things he says TIRC did to keep public opinion reasonably healthy; correct?

A. Well he doesn't say TIRC. He says a shot of insulin in the way of news release, et cetera, et cetera, kept the patient going. That's what it says.

Q. Do you -- do you have any doubt that he is referring to any other organization than TIRC when he references news releases?

MR. ALLINDER: Object to the form.

A. Well I don't know.

Q. The whole point of this memo has got to do with the past, present and future programs of TIRC; does it not?

A. Well I don't know if it has anything to do with the future programs. He's talking about --

Q. He mentions that in the first paragraph, doesn't

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he?

A. Well, no, what he's saying is his feelings about the past, present, and future program and his thoughts on the matter. And in this particular sentence it doesn't refer -- down in paragraph 4, does not indicate that this is future. It says in the past that this is the way it was handled.

Q. Well other than the TIRC and possibly the tobacco companies, are you aware of anyone else, any other entity, that was issuing any press releases attempting to combat the bad public relations aspects of the Hammond studies relative to the tobacco industry?

MR. ALLINDER: Object to the form.

A. I really don't know what the tobacco companies themselves said or what Hill and Knowlton said or what TIRC said at the time. It's a matter that I'd have to study.

Q. But you have had a chance to review documents prior to this deposition supplied to you by the State of Minnesota that comprised a number of press releases issued by TIRC between 1954 and into the 1970s; correct?

A. That's correct.

Q. And those -- there is a constant thread that

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runs through those TIRC press releases with respect to the issue of whether the case against cigarette smoking causing cancer has been proven or not, isn't there?

MR. ALLINDER: Object to the form.

A. There is.

Q. The constant thread of all of those press releases is that there's still an open controversy, nobody knows, maybe it does, maybe it doesn't, we need to keep looking into it, everybody should be patient, we'll spend more money and we'll let you know what we find out. That's basically what those press releases say, isn't it?

MR. ALLINDER: Object to the form.

A. I think that's a fair summary.

Q. And those are press releases that were issued by this organization and its successor CTR over the course of almost 20 years while study after study after study was issued implicating smoking with cancer and cardiovascular disease; true?

MR. ALLINDER: Object to the form.

A. The press releases by the scientific director and perhaps some other people in the administration emphasized that they did not accept as proven the causal relationship between cigarettes and smoking.

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In that respect --

Q. "They" meaning CTR as an organization; correct?

MR. ALLINDER: Excuse me, Dick.

MR. GILL: I just wanted to clarify that.

MR. ALLINDER: Well -- but sometimes your clarifications have taken him way from an answer, so why don't you let him finish his answer and then you can ask him to clarify.

A. Whether this was conveyed to the public as the personal views of Dr. Little or some of his associates or whether it was an official statement of the views of the CTR itself I don't really know.

Q. Well if --

A. But -- Let me finish.

Q. Go ahead.

A. But during that entire period of time there were -- or there was not unanimity of opinion in the scientific community regarding the relationship of tobacco to cancer. In my opinion the preponderance of evidence in the 60s was on the side of a cause and effect relationship between smoking and cancer, and indeed I accepted it at that time and certainly would maintain that the evidence today is overwhelming. But that is not to say that there were not perfectly respectable scientists in the biomedical community at

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that time who did not share Dr. Little's opinion or Mr. Brady's opinion or whoever it was who questioned this relationship, so there was a minority that had reservations.

MR. PURDY: Can we take a short break?

MR. GILL: Let me just finish this -- this area and then we will.

Q. When the CTR issued a press release, assumedly the information in the press release was stated on behalf of the entity; correct?

MR. ALLINDER: Object to the form.

Q. If the entity issued a press release, we can fairly assume that the entity vouched for the content of the press release.

A. Well I --

MR. ALLINDER: Excuse me. Same objection.

A. Yeah. I would have to have the document in front of me to be able to judge whether it says that Dr. C. C. Little or Mr. -- or Dr. J. M. Brady said that, this and that, or whether it states that The Council for Tobacco Research as an official policy states the following. You'd have to show me the documents and then I'd give you my impression.

Q. Now you mention that the case implicating smoking has now become overwhelming with respect to

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the weight of scientific authority on one side of that question versus the other; true?

A. That is my opinion.

Q. Has the CTR to this day ever issued a statement that you're aware of acknowledging that the overwhelming weight of scientific authority implicates smoking with cancer and cardiovascular disease?

MR. ALLINDER: Object to the form.

A. I'm not aware of any official statements on the part of the CTR that says that.

Q. Even though it has had several scientific directors who were supposedly of unimpeachable integrity?

MR. PURDY: Well --

MR. ALLINDER: Object to the form.

A. Well I'm not going to agree that they were supposedly of unimpeachable integrity. As far as I'm concerned they were and are of unimpeachable integrity. What it comes down to is the interpretation of causality. The current president of the CTR in the deposition transcripts that have been made available to me has no problem in acknowledging that cigarette smoking is a substantial risk factor for the development of cancer of the

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lung, he states that and has no difficulty in agreeing with that concept. His point of view is that epidemiologic data alone do not prove a cause and effect relationship and that the cause and effect relationship has to be established by experimental data, and that -- that is his view. But as far as I can tell neither he nor anyone else in that organization, such as Dr. McAllister, contests the overwhelming evidence of the association between cigarette smoking and cancer to the lung.

Q. But you've never seen a public statement to that effect by either of those doctors, have you?

MR. ALLINDER: Object to the form.

A. I have not.

MR. GILL: Let's take a break.

MR. ALLINDER: 10 minutes?

MR. GILL: Yeah, that's fine.

(Recess from 9:55 to 10:04 a.m.)

BY MR. GILL:

Q. Dr. Rubin, in one of your answers you refer to the author of Exhibit 3503 as Dr. Brady. And isn't it your understanding that all of the associate directors through the years of TIRC and CTR are in fact, have in fact been doctors?

MR. ALLINDER: Object to the form.

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A. I think they are, but I -- I could be wrong.
Q. Now down at the bottom of the first page of Dr. Brady's memorandum to Dr. Little, the very last sentence, he says, quote, "I would guess there is the beginning effect of reduced consumption of the product, balancing population increase against comparative sales. Did I read that sentence correctly?
A. You did not include the parentheses --
Q. Okay.
A. -- but the text is correct.
Q. Now do you have -- assuming that Dr. Brady is a -- an associate director of the TIRC, do you have any idea why he would be concerned about sales of cigarette products?
MR. ALLINDER: Object to the form.
A. I have no idea.
Q. Do you have any idea why he might want to call it to Dr. Little's attention that some of these adverse public relations matters appear to be causing reduced consumption of the product?
MR. ALLINDER: Same objection.
A. I don't know what was in Mr. -- or Dr. Brady's mind.
Q. Now in terms of the potential conflict of

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interest situation that Dr. Little is in with respect to being paid by the cigarette industry while involved in funding research that is supposed to answer questions about smoking and health, this is not information that Dr. Little ought to be concerned about; true, --

MR. ALLINDER: Object to the form.

Q. -- sales of cigarettes?

MR. ALLINDER: Object to the form.

A. I don't believe that Dr. Little's activities as the scientific director were influenced by sales of cigarettes.

Q. There wouldn't be any conceivable reason for anybody bringing data like that to his attention; true?

MR. ALLINDER: Object to the form.

A. Well in my own work there are many items that are brought to my attention that have nothing to do with my work. I receive memoranda and public pronouncements every day regarding rules of managed care with regard to patient charts, with all kinds of memoranda regarding operations of hospitals and health maintenance organizations, much of which has nothing whatever to do with my responsibilities, they're brought to my attention because in general

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they say something about the environment in which I live, so that the very fact that someone sends a memorandum with his own opinions to Mr. or Dr. Little hardly means that it influenced Dr. Little's decisions and activities with respect to the program of CTR.

Q. We have no way of knowing whether it influenced Dr. Little's activities, do we?

MR. ALLINDER: Object to the form.

A. Well I make the assumption that Dr. Little was honest, sincere, and dedicated to the betterment of mankind and that his decisions and activities with respect to his responsibilities at CTR were carried out in an exemplary fashion.

Q. You're aware that in the late 1950s the tobacco industry established a trade organization, trade association by the name of The Tobacco Institute; true?

A. I've heard about it.

Q. And that is an organization that is directly controlled by the tobacco industry for purposes of furthering the interests of the tobacco industry; --

MR. ALLINDER: Object to the form.

Q. -- correct?

A. I don't know exactly what went into the charter

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of that organization, but what you say seems reasonable to me.

Q. The public statements that Dr. Little made about the existence of an open controversy with respect to causation between cigarettes and cancer between 1954 and 1971 echoed the statements issued by the trade association on behalf of the tobacco industry to the same effect; true?

MR. ALLINDER: Object to the form.

A. Dr. Little was of the opinion that there was a continuing controversy. That is a fact, although in my opinion the large preponderance of evidence was on one side, that the controversy was probably limited to a rather small number of people on the other side.

Q. And those are facts that Dr. Little never publicized; true?

MR. ALLINDER: Object to the form.

A. I would agree with that.

Q. And those are facts that The Tobacco Institute never published -- publicized in continuing to claim that an open controversy existed; --

MR. ALLINDER: Object.

Q. -- true?

MR. ALLINDER: Object to the form.

A. I'm less familiar with the activities of The

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Tobacco Institute, and I would request that you put the documents in front of me.

Q. Well assuming that my representation about the public statements of The Tobacco Institute is true, then Dr. Little's public statements would have been consistent with the public statements of The Tobacco Institute on the subject of tobacco cancer causation; true?

A. They --

MR. ALLINDER: Object to the form.

A. They may have been similar.

Q. If you'd look at page 2 of Exhibit 3503, Dr. Brady makes certain suggestions for the TIRC to pursue in the future; true?

A. That is true.

Q. Do you know whether Dr. Brady had ever been employed by a cigarette company prior to his retention by the TIRC?

A. I don't recall.

Q. One of the things that Dr. Brady suggests under item 2 is that TIRC make an educational television film; do you see that?

A. I see it.

Q. He says that would be needed for the, quote, "soft sell," unquote, and that this would have to be

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TIRC to qualify for TV acceptance. Do you see that?
A. I see it.
Q. In other words, he's saying that if the tobacco industry made an educational television film containing a soft sell it was unlikely to be accepted?
MR. ALLINDER: Excuse me. Are you done?
MR. GILL: Yes.
MR. ALLINDER: Object to the form.
A. You're getting into an area where I'm not expert. What is required for TV acceptance or rejection isn't an area that I know much about.
Q. Well isn't Dr. Brady referring to the fact that an industry-sponsored television film containing a soft sell might not be accepted from the standpoint of credibility?
MR. ALLINDER: Object to the form.
A. What it says it would have to be TIRC to qualify for TV acceptance, and I don't know much more about it than that.
Q. Now in the Frank Statement, there isn't any indication that the TIRC is going to be producing soft sell educational pieces for television on behalf of the industry, is there?
A. I --

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MR. ALLINDER: Object -- excuse me. Object to the form.

A. I didn't see that in the Frank Statement.

Q. Then number 3 is a reference that TIRC ought to reconsider a, quote, "Report to Physicians," unquote, in addition to the TIRC annual report. Do you see that reference?

A. I see it.

Q. Have you ever read a document issued by the TIRC called "Report to Physicians"?

A. I may have. I don't recall.

Q. Was the thrust of that document that the controversy with respect to causation was still unproven?

MR. ALLINDER: Object to the form.

A. It may have been, but I'd rather have the document in front of me to comment on it.

Q. Do you know whether TIRC sometime after April 9, 1962 did issue another report to physicians?

MR. ALLINDER: Object to the form.

A. I don't recall.

Q. Now a report to physicians isn't the sponsoring of research, is it?

MR. ALLINDER: Object to the form.

Q. Preparing and distributing a report to

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physicians, that's not funding research, is it?

MR. ALLINDER: Excuse me. Object to the form. Did you mean to withdraw your prior question, because he never responded to it?

MR. GILL: Yes.

MR. ALLINDER: Okay.

A. It may be considered under the rubric of disseminating research information to physicians.

Q. Disseminating a report that attempted to place the interests of the tobacco industry in a favorable light, that would be a form of public relations; would it not?

MR. ALLINDER: Object to the form.

A. I think it would be a form of public relations, but would not imply that the information is incorrect.

Q. And certainly a soft sell piece to be used on television, that would be a public relations effort as well; true?

MR. ALLINDER: Object to the form.

A. I think it's probably true.

Q. It certainly wouldn't be the funding of research?

MR. ALLINDER: Object to the form.

A. That would not be the funding of research.

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Q. And then Dr. Brady suggests to Dr. Little that he sign and send a letter to each state medical society president with a message that would read, quote, "Because of the heated controversy about the effect of tobacco and health, your society may be interested in our point of view in this matter. We are not interested in debates, but would be happy to tell our story. The following staff members can be made (sic) available to your program chairman. Since we are not a public relations group and our headquarters staff is small, we would appreciate as much advance notice as possible." End of quote. Did I read that correctly?

A. You did.

Q. That very thing would constitute another public relations effort; would it not?

MR. ALLINDER: Object to the form.

A. He specifically says he's not a public relations group, so what he is saying is that our point of view in the matter presumably has some place in the heated controversy.

Q. Presumably that our point of view is something other than simply a public relations message?

MR. ALLINDER: Excuse me. If that's a question, object to the form.

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A. No, it speaks for itself. It speaks about a heated controversy and it speaks about our point of view. Presumably the "our point of view" he considers a legitimate part of the heated controversy.

Q. And it would be CT -- TIRC's point of view; correct?

MR. ALLINDER: Object to the form.

A. Doesn't say that. It says a letter signed by CCL, which would be Clarence Cook Little, and when it says "our point of view" it doesn't make clear whether "our" refers to Little and Brady or whether it refers to an official point of view of the TIRC.

Q. Or perhaps it refers to the point of view of the TIRC and the tobacco industry?

A. It doesn't say what it refers to.

Q. Well certainly there would be no point in sending a representative of the CTR or the TIRC to a state medical society meeting to propagate the particular point of view of Brady and Little irrespective of the organization that they worked for; true?

MR. ALLINDER: Object to the form.

A. I would assume that there was some convergence of opinion on the subject among the staff of the CTR.

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Q. And then in item number 5 Dr. Brady suggests sending staff members off to international annual conferences because doing so would improve our image. Do you see that reference?
A. I see it. It says, "This improves our image."
Q. And that again is another reference to a public relations aspect of TIRC's duties?
MR. ALLINDER: Object to the form.
Q. True?
MR. ALLINDER: Same objection.
A. That is true.
Q. In all of Mr. -- all of Dr. Brady's memo to Dr. Little he never once mentions anything about research other than in item number 1 on page 2 he allows for a budgetary allocation for research; true?
MR. ALLINDER: Object to the form.
A. It says down at the end, number 6, "It would be desirable for all grantees to have an official staff visit once a year that involves research." And number 1B is a budget allocation.
Q. And the rest of the entire memo deals with public relations problems and responses; correct?
MR. ALLINDER: Object to the form.
A. More or less.
(Plaintiffs' Exhibit 3504 marked for

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identification.)

Q. Did you see Exhibit 3504 during your preparation for this deposition, Dr. Rubin?

A. I did.

Q. This appears to be an advertisement that was issued about tobacco and health.

A. That's what it says.

Q. And this advertisement is sponsored by whom?

MR. ALLINDER: Object to the form.

A. At the bottom it says Tobacco Industry Research Committee on the left and on the right it says The Tobacco Institute, Inc.

Q. So apparently jointly sponsored by those two organizations?

A. Apparently.

Q. So in this instance the Tobacco Industry Research Committee which was allegedly created in the public interest is issuing a -- an ad with The Tobacco Institute, a trade association of the tobacco industry?

MR. ALLINDER: Object to the form.

A. I don't object to that.

Q. In the third paragraph of the first column it reads, quote, "We recognize that we have a special responsibility to the public - to help scientists

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determine the facts about tobacco and health, and about certain diseases that have been associated with tobacco use." Did I read that correctly?

A. You did.

Q. So this is an affirmation by TIRC that it recognizes a special responsibility to the public --

MR. ALLINDER: Objection.

Q. -- with respect to the important question of disease and tobacco use?

MR. ALLINDER: Object to the form.

A. That's correct.

Q. And would you agree that that statement implies that the TIRC intends to place the public interest with respect to that issue above the economic interests of the tobacco industry?

MR. ALLINDER: Object to the form.

A. There's no reference to the economic interests of the tobacco industry. The paragraph speaks for itself.

Q. Do you agree that implicit in that statement is that the responsibility to the public will be paramount to the responsibility or any responsibility that TIRC has to the tobacco industry?

MR. ALLINDER: Object to the form.

A. Well it's not inconsistent with the Frank

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Statement, but the word is "special responsibility to the public". That means what it says.

Q. As you read the statement, do you read it as implying that whatever level of responsibility TIRC has to the public, that level of responsibility will be considered paramount to its responsibility to the tobacco industry?

MR. ALLINDER: Object to the form, asked and answered.

A. That was in the Frank Statement. This advertisement speaks about a special responsibility to the public.

Q. Do you read this advertisement as in any way diminishing the assurance on the subject that was contained in the Frank Statement?

A. No.

MR. ALLINDER: Object to the form. You've got to pause for just a minute after the question's asked. The court reporter likes us not to talk over each other.

(Plaintiffs' Exhibit 3505 marked for identification.)

Q. Did you review Exhibit 3505 in preparing for your deposition, Dr. Rubin?

A. I did.

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Q. You recognize that it is some handwritten notes that concern or apparently concern a CTR meeting that was attended by Yeaman, Gardner, Hockett, Stevens and Judge?

A. Yes.

Q. Do you recognize any of those names?

A. Yes.

Q. Which ones do you recognize?

A. Dr. Gardner I believe was scientific director. I think Dr. Hockett was an associate director.

Q. At CTR during the 1970s?

A. Yes.

Q. Do you recognize any of the other names?

A. I've come across those names, but I don't recall exactly who they were or what they did.

Q. Do you recall anything about the name Yeaman based upon the review that you've made of documents in this case and other tobacco cases that you've worked on?

A. He had some relationship to the tobacco industry; I don't remember exactly what it was.

Q. Did he also have a relationship to CTR?

A. You will have to inform me.

Q. Do you recall that Mr. Yeaman was at one time the general counsel of Brown & Williamson Tobacco

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Company?

A. If you say so, I'm willing to accept that.

Q. That doesn't jog your memory with respect to any documents that you've reviewed?

A. No.

Q. Do you recall based upon any documents that you've reviewed that Mr. Yeaman also served as the chief executive officer of CTR during the 1970s?

A. I -- I have no reason to doubt that.

Q. How about Mr. Stevens, do you recall anything about how Mr. Stevens' name has come up in the documents that you've reviewed?

A. He's one of a long list of names or group of names that has come to my attention. I don't recall exactly.

Q. Was he a general counsel for Lorillard?

A. It's all right with me.

Q. You don't recall one way or the other?

A. I don't recall, no.

Q. Was Mr. Judge, the final name of the persons who attended this meeting, at one time CEO of Lorillard?

A. It's all right with me if he was.

Q. Well assuming that Messrs. Stevens and Judge were not directly affiliated with CTR during the 1970s but rather were affiliated with tobacco

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companies, do you find it surprising that they are involved in a meeting with Gardner, Hockett and Yeaman, assuming Yeaman is now the CEO of CTR as opposed to being general counsel of Brown & Williamson?

MR. ALLINDER: Object to the form.

A. No.

Q. We talked earlier about the fact that a conflict of interest could certainly arise at the CTR if the research that it sponsored implicated smoking in causing cancer; do you recall that?

MR. ALLINDER: Object to the form.

A. I don't recall agreeing to it. I recall your alleging that.

Q. Didn't you agree that if the research sponsored by the CTR and publicized -- the results of which might have been publicized by CTR established that smoking caused cancer and other diseases, that that type of information would be in conflict with the economic interests of the tobacco companies?

MR. ALLINDER: Object to the form.

A. That would be in conflict with the economic interest, but would not represent a conflict of interest for scientific director or the SAB since they were committed to letting the chips fall where

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they may.
Q. Well the -- the SAB wouldn't have had much of a monetary potential conflict because, as we discussed yesterday, they were simply paid with some type of honorarium which -- which didn't amount to a significant amount, but the employees of TIRC and later CTR, their livelihoods depended upon the salaries that they were paid --
MR. ALLINDER: Object to the form.
Q. -- by CTR --
MR. ALLINDER: Same objection.
Q. -- and TIRC; correct?
MR. ALLINDER: Objection.
A. Their salaries were paid, but that does not mean that they were under any pressure to make their scientific judgments conform to any preconceived notion.
Q. But their salaries were being paid by companies whose interests were in conflict with research studies that might prove the causal relationship between smoking and cancer; --
MR. ALLINDER: Object to the form.
Q. -- correct?
A. That's correct, but it demonstrates that there was a sincere effort to create and continue a purely

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objective search for the truth in this case by appointing people who would rise above such petty considerations.

Q. How would a purely objective search for the truth require the input of lawyers and executives on behalf of the tobacco companies at meetings conducted by the CTR?

MR. ALLINDER: Object to the form.

A. I'm not sure that it would require the attendance of any particular people, but their attendance would not by itself influence the objectivity of the decisions. Now on the other hand -- I'm not finished -- if those decisions really of the SAB -- and the scientific director did not make these decisions by himself -- these were votes by the SAB -- now if those decisions were changed as a result of pressure by lawyers or executives of the tobacco companies, then I think it would be appropriate to make me aware of chapter and verse; in other words, which grant was not approved or which one was approved by the SAB and which one resulted in a fraudulent paper or withholding of important data, and then we can discuss it from there, but global accusations without specifics serve no purpose in my view.

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Q. Wouldn't you agree that typically an employer who pays an employee's salary exercises some control over the conduct of the employee?

MR. ALLINDER: Object to the form.

A. It depends upon the nature of the employment, the agreement, and the circumstances. I am being paid for my time at this deposition by a law firm, but by no means are they able to influence anything that I say. I say exactly what I want to say regardless of the fact that I'm being paid for my time. Dr. Little and his successors in my opinion were men of unimpeachable integrity, they agreed to be paid on condition that their decisions would be entirely independent, and I have no reason to believe that those decisions were not independent, and I am still waiting for specific allegations regarding specific decisions of the SAB and of grant approval and funding to document the allegations regarding the CTR.

Q. You wouldn't expect to find some type of confession by Dr. Little that he was attempting to promote the interests of the tobacco industry while exercising his duties as SAB scientific director, would you?

MR. ALLINDER: Object -- excuse me. Object

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to the form.

A. When besmirching the reputation of a great man I would expect that specific allegations would be documented and that the type of global inferences or implications would be avoided unless there was some reasonable evidence to suggest that Dr. Little or any of the scientific directors were corrupted or truly remiss in their activities. Such things in my view are possible, but they should be established by reference to specific items. And absent some evidence, I think it's inappropriate to cast doubt upon the integrity of these people.

Q. Do I recall yesterday a reference you made to the O. J. Simpson trial as indicating that you personally had arrived at the conclusion that he was guilty?

MR. ALLINDER: Object to the form.

A. I think the DNA evidence was incontrovertible.

Q. So in that case you didn't regard the DNA evidence as circumstantial evidence, you regarded that as direct evidence of guilt?

A. Very specific. Very specific direct evidence of guilt, of the presence of someone at a certain place at a certain time.

Q. And if the case had been -- if the Simpson case

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had been exactly the same but absent the DNA, would you have still felt that the remaining evidence of the prosecution against Mr. Simpson was sufficient to convince you --

MR. ALLINDER: Object --

Q. -- that he was guilty?

MR. ALLINDER: Object to the form.

A. I was so sick and tired of hearing about that case that I didn't pay any attention to what was going on and made a determined effort to avoid reading or watching those proceedings, but I do remember the specific DNA evidence which I considered to be conclusive and which the jury apparently threw out.

Q. And you haven't come across any DNA evidence in this tobacco case?

MR. ALLINDER: Object to the form.

A. I'm waiting.

Q. And that's more or less what it's going to take as far as you're concerned; right, Dr. Rubin?

MR. ALLINDER: Object to the form.

A. No. No, wouldn't take that. It wouldn't take that.

Q. Well --

A. What it would take is some evidence. I think

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that talk is cheap and allegations are cheap. And I think that the very honorable people who committed their time and efforts to serving the needs of the biomedical research community, I don't think their reputations should be besmirched by allegations that have no substance to them.

Q. Well, we do -- we do know a number of the public pronouncements by Dr. Little with regard to the issue of whether tobacco smoking caused cancer or other diseases, we have a number of those; do we not?

A. You do.

Q. And all of those public pronouncements that we have with Dr. Little's name on them are consistent with the position taken by the tobacco companies and their trade organization on the subject of causation; true?

MR. ALLINDER: Object to the form.

A. To my knowledge that is true.

Q. And as far as you're concerned the -- that's mere coincidence and nothing more?

MR. ALLINDER: Object to the form.

A. There is an inference here that views held by a minority by virtue of the fact that they are in the minority are not sincerely held, that there is an ulterior motive to people who have minority views,

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and I don't agree with that attitude, although I must say that those minority views are not consistent with my own view, nor my own views at that time. But sometimes minority views have a way of eventually being right. More often they're wrong, but occasionally they are right. You know, "Eppur si muove" is still -- or in its time was a minority view, but Galileo turned out to be right, and the Pope, even though infallible, turned out to be very fallible and very wrong. I can list for you a fair number of instances where minority and even unpopular views in biomedical science eventually proved to be right. More often than not they are not right and the majority view rules.

Q. Recognizing that, Dr. Rubin, I take it though you're telling me that if you found some credible evidence suggesting that Dr. Little's pronouncements on the subject were not sincere with respect to their being an open controversy you would be prepared to reassess your views on the subject?

A. Yes, I would.

Q. Now let's get back to Exhibit 3505. The author writes at the bottom of page 1, quote, "CTR is best and cheapest insurance the tobacco industry can buy and without it the industry would have to invent CTR

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or would be dead." End of quote. Did I read that correctly?

A. You did.

Q. Now this was apparently written by one of the persons attending this meeting; is that a fair conclusion to draw?

MR. PURDY: Object to the form.

A. This was the opinion of either the person who wrote this or Mr. Yeaman's opinion because it's a quote underneath a -- what would you call it --

Q. A reference to Yeaman?

A. -- a reference to Yeaman. I can't tell exactly whose this opinion is. It might have been Yeaman's or somebody else's.

Q. Now assuming that it was a quote of something Yeaman said at the meeting and that Yeaman had previously been the general counsel, chief legal officer for Brown & Williamson Tobacco Company and was then the chief executive officer of CTR, this opinion by Yeaman is certainly at odds with the mission of TIRC as set forth in the Frank Statement; true?

MR. ALLINDER: Object to the form.

A. I don't see how it's at odds. The CTR is run as a grant-giving organization, and what he is saying is

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that this is -- to have such an organization investigating the relationship of tobacco to health is clearly in the industry's interest. Now I -- I don't know whether it was Yeaman or not. I want to emphasize that. It may have been. But actually there's just a separate quote here. I don't know. It could have been somebody else.

Q. As we've discussed many times, the Frank Statement made clear that the industry was committed to placing the public interest in health paramount to its own business interests; --

MR. ALLINDER: Object to the --

Q. -- correct?

MR. ALLINDER: Object to the form.

A. It says paramount to all other interests.

Q. Of our companies?

A. Yes. Yes.

Q. Now Yeaman's -- assume -- let's assume that this is Yeaman, but I accept your qualification that -- that you're not positive about that, but Yeaman is referencing the work of CTR only with reference to its benefit to the tobacco industry; correct?

MR. ALLINDER: Object to the form.

MR. PURDY: Objection, yeah.

A. In this quote that's true.

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Q. Is there any reference that you can find in this quote to the public interest?

MR. ALLINDER: Object to the form.

A. I do not find any such reference in this quote.

Q. And certainly no reference that CTR's mission is to place the public interest paramount to the interests of the tobacco industry that happens to be playing -- paying the salaries of the people employed by the CTR?

MR. ALLINDER: Object to the form.

A. There's nothing in this quote to indicate that.

Q. Now, how in the world based upon your review of all of the TIRC and CTR material that you've seen could CTR be seen as a form of insurance to the tobacco industry other than in the context of a public relations front?

MR. ALLINDER: Object to the form.

A. Well let me start on that. Because that gets to the heart of the issue. And it's a question that deserves a reasoned answer. The CTR was giving out grants to reputable scientists who contributed substantially to our understanding of the relationship of tobacco to health and to the basic science underlying changes in organs affected by tobacco. To accuse these scientists or the journals

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in which they published of acting as a front for the tobacco industry or for anyone else is in my opinion a very serious and scurrilous accusation. The grants were approved or prioritized by a scientific advisory board, which was and is composed of in my opinion distinguished, honorable men whose integrity has never come into question. To accuse such people of participating in a front or a sham or a fraudulent activity is, I think, virtually an intolerable and inappropriate allegation. So we have here an entire organization of scientific advisory board of scientists -- not an organization, a system, of scientists, of journal editors working toward the public health, public benefit who are accused of participating in a public relations front and fraudulent activity. To think that such a large group, well over a thousand people, of independent reputations, to think that they would all be so naive and/or so corrupt as to participate in such an activity, fraudulent activity, or not to have any inkling of the fraudulent nature of this activity boggles the mind. So that in my view any attempt to tar the reputation of this program as a front or a sham inevitably must include all of the people who participated in this program, and I don't think that

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that is an honorable thing to do.

Q. So, Dr. Rubin, to establish in your mind that the CTR operated as a public relations front for its shareholders, the tobacco industry, we would have to demonstrate that each and every person who was either employed by or acted on behalf of CTR or its SAB was involved in the public relations front activities; is that what you're saying?

MR. ALLINDER: Object to the form.

A. That's not what I'm saying. You've changed what I've said. You have said that it would be necessary to demonstrate that each and every person. I don't think that would be necessary.

Q. Let's take the SAB --

A. But to think --

Q. -- out of the question.

A. Please let me finish.

Q. I think you've answered the question.

MR. ALLINDER: No, I don't think he has.

Q. Please try to give me a short answer to this question because I think you've said no, you don't agree with me.

MR. ALLINDER: No, Dick, he gets to answer your questions as he thinks is necessary to give you a complete and appropriate answer.

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MR. GILL: As long as they're responsive and --

MR. ALLINDER: Well, if you think --

MR. GILL: -- several of them have not been responsive.

MR. ALLINDER: Well if you think that one is unresponsive, why don't you let us know, we can talk about that.

Q. Go ahead, Dr. Rubin, please give me a short completion of your answer, as short as you can give me?

A. I'll do my best. As I said before, just to recapitulate, --

Q. You don't need to recapitulate. If you've got something more, that's fine.

A. It's not new, it's a continuation of the distortion of what I said. I didn't say that it was necessary to demonstrate that each and every person who was supported by the SA -- by the CTR or participated in the SAB was corrupt. There are in life unknowing dupes. But to think that all of these thousands of scientists, perhaps some 5000 scientists whose names are on the papers supported by CTR, some 1100 grantees, and the various members of the SAB, that none of them were involved or none of them

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recognized the sham or fraudulent nature of this organization is beyond imagination. So it is not necessary to demonstrate that each and every one, but I would like to see evidence that a substantial number of members of the SAB were corrupted or that a substantial number of grantees were corrupted, or that the reviewers or journal editors were improperly influenced by the tobacco industry or by employees of the CTR. I think that would be a minimum start toward establishing that the CTR was not a legitimate grant-funding organization.

Q. Dr. Rubin, as we've seen, the CTR conducted a number of activities that did not specifically involve either the SAB or the grant program; true?

MR. ALLINDER: Object to the form.

A. I am aware of the special projects.

Q. Well as we've also seen, TIRC and CTR issued press releases; true?

A. True.

Q. TIRC apparently issued a report to physicians; true, that had nothing to do with the SAB program?

A. That did not have anything to do with the SAB program.

Q. It was considering doing telephone programs, and that had nothing to do with the SAB?

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MR. ALLINDER: Object to the form.

A. Had nothing to do with the SAB.

Q. All right. Now, these other activities of the CTR obviously were undertaken with some intention to pursue certain goals; correct?

MR. ALLINDER: Objection to the form.

Q. They weren't simply mindless activities, were they?

A. To formulate -- no, but to formulate my answer, do I understand now that you acknowledge that the SAB and the entire SAB program was exemplary?

Q. No, I'm just saying let's set aside for the time being, let's set the SAB portion of the CTR activities aside for the time being. There were other activities that were going on; true?

A. There were other activities, but I -- I --

Q. And they were activities of public relations?

A. But I'm trying to understand what -- what do you mean by "setting aside the SAB program"? Do you mean setting it aside because you acknowledge that it was an outstanding program?

Q. I mean setting it aside in the sense that it's not within the scope of the next series of questions that I'm going to put to you.

A. I see; it's something that you don't want to

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discuss any more.
Q. It's something that I'm not including in the next series of questions.
A. Oh.
Q. Now that's a concept that you're able to follow; true?
A. I -- I can follow that, yes.
Q. Now a number of the other activities of the CTR, as we have seen and you have acknowledged, related to public relations functions; true?
MR. ALLINDER: Objection to the form.
A. I've been made aware of some public relations aspects of the CTR.
Q. And public relations functions intended to advance the interests of the tobacco industry; correct?
MR. ALLINDER: Objection to the form.
A. Presumably so.
Q. And assuming Mr. Yeaman was the declarant of the quote that CTR is best and eloquent -- best and cheapest insurance the tobacco industry can buy and without it the industry would have to invent CTR or would be dead, Mr. Yeaman may well have been referencing the public relations work of the CTR with respect to the term, quote, "insurance," unquote;

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true?

A. That --

MR. ALLINDER: Excuse me. Object to the form.

A. That's an uncharitable interpretation. I would interpret that he was saying that our -- that the efforts to establish the scientific basis of the relationship between tobacco and health is the best and cheapest insurance.

Q. So you would interpret as an investigator here willing to let the chips fall where they may the reference in Exhibit 3505 to quote, "insurance," unquote, as a reference to the CAB grant program?

MR. ALLINDER: Object to the form.

Q. Is that what you're saying?

A. To the -- to the SAB grant program.

Q. Yeah.

A. I think it can be interpreted that way. I've never spoken with Mr. Yeaman to ask him exactly what he meant, and the language is clearly imprecise, but it certainly could be interpreted that way as well as any other way. I do not presume to know more about it.

Q. Could it fairly be interpreted, Dr. Rubin, that the reference to insurance is a reference to the

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public relations functions and activities of CTR on behalf of the cigarette industry?

MR. PURDY: Object to the --

MR. ALLINDER: Object to the form.

A. I think the simplest explanation would be that the entire activity of the CTR in providing grants to scientists and developing a scientific program would result in a -- a better view of the tobacco company by the general public and that in this respect the -- the interests of the general public and the interests of the CTR might coincide.

Q. And this document, assuming that it was prepared sometime during the 70s, would have been a reference to the work of TIRC and CTR over the course of approximately 20 years' time; correct?

MR. ALLINDER: Object to the form.

A. It doesn't say that. May --

Q. Well assuming --

A. Maybe.

Q. -- Gardner was the scientific director in the 70s, as you believe that he was.

A. Yes.

Q. And if in fact the declarant's reference to insurance for the industry is a reference to the SAB grant program, then the declarant apparently felt

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that that was a very cheap program to sponsor?

MR. ALLINDER: Object to the form.

Q. True?

A. It says that it's the cheapest insurance. It doesn't -- that's what it says.

Q. And that would be a very curious way to describe the work of the SAB grant program; wouldn't you agree?

MR. ALLINDER: Object to the form.

A. Well I don't know. You're asking me questions where I'm not really an expert. You know, cheapest insurance could be say compared to a billion dollar advertising campaign or something like that, it's hard to say.

Q. Is it your understanding that the tobacco industry has spent billions of dollars advertising its products?

A. Well I don't --

MR. ALLINDER: Objection to the form.

A. I don't know how much they spent on advertising. Judging from the billboards, magazines, probably a pretty fair piece of change.

(Plaintiffs' Exhibit 3506 marked for identification.)

Q. 3506 is another exhibit that you reviewed prior

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to this deposition; true, Dr. Rubin?

A. I seem to recall having looked at it.

Q. This appears to be another press release by the Tobacco Industry Research Committee for immediate release as of June 6, 1955; correct?

A. That's correct.

Q. So this would be approximately 18 months after the TIRC was initially formed?

A. My arithmetic would confirm that.

Q. In the second paragraph on page 1 of this Exhibit Mr. Hartnett, the chairman of the TIRC, is quoted as stating, "The American public should not be misled by sweeping generalizations based on a survey that has been criticized by scientists for its limitations and inadequacies." Did I read that correctly?

A. You did.

Q. And what Mr. Hartnett is criticizing in that statement is a epidemiological study by Dr. Hammond; is that correct?

A. I think you're right.

Q. So the apparently official position of the TIRC in response to the publication of Dr. Hammond's latest epidemiological study was that the public ought not to put significant credence in the

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conclusions of that study?

MR. ALLINDER: Object to the form.

Q. True?

A. Well down below it says "Careful scientists will, I am sure, perceive the limitations of this report as they have in the past," so he -- that's the summary of what his point of view is.

Q. The whole effect of this press release is to stamp out whatever brush fire may have occurred as a result of Dr. Hammond's latest study; true?

MR. ALLINDER: Object to the form.

A. Well I don't know motivation as well as you do, but I would say that the overall thrust is to cast -- introduce questions as to the reliability of Dr. Hammond's study.

Q. And this press release may very well have been one of the shots of insulin that Dr. Brady told Dr. Little about in that 1962 memo that we discussed previously; true?

MR. ALLINDER: Object to the form.

A. I wouldn't be surprised.

(Plaintiffs' Exhibit 3507 marked for identification.)

Q. Showing you Exhibit 3507, Dr. Rubin, I take it that you have also previously reviewed this

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particular press release by TIRC?

A. I believe I have.

Q. This one is dated December 16, 1957, so this would be close to four years from the time TIRC was formed; true?

A. About four years.

Q. During that four years obviously the -- the SAB grant program was certainly up and running and significant research studies had been funded?

A. Yes.

Q. A significant number of research studies had been funded?

A. Yes.

Q. In this particular press release statements are attributed to Dr. Little; correct?

A. That's right.

Q. It starts out by saying that according to Dr. Little, quote, "Extensive scientific research now under way into tobacco use and human health does not substantiate generalized charges against smoking as a cause of cancer." Did I read that directly?

A. You did.

Q. And then down at the bottom it mentions major points made by Dr. Little, one of them being "No substance has been found in tobacco smoke known to

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cause cancer in human beings..." Did I read that correctly?

A. You did.

Q. In number 4 on page2 of Dr. Little's major points he attempts to dispute published reports that nicotine might cause cardiovascular problems; true?

MR. ALLINDER: I'm sorry, Dick, where were you again?

MR. GILL: Page number 2, the fourth point.

MR. ALLINDER: Okay. Thank you.

A. He's not talking about cardiovascular problems, he's talking about vasoconstriction.

Q. Which could lead to heart problems; true?

A. I would think that that's probably a maj -- an area of dispute even today.

Q. Well constriction of arteries or veins in terms of the narrowing of arteries or veins is not a positive development in a patient's health, is it?

A. It's absolutely necessary and if the -- if you lose that ability you go very quickly into shock and die from shock. Vasoconstriction or vasomotor tone is what maintains blood pressure when we consider it in terms of the medium and small vessels and arterials. What you really are referring to is the possibility of vasospasm of the coronary arteries as

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a factor in myocardial infarction, and that is an area which is currently under a great deal of study --

Q. What --

A. -- and is even controversial.

Q. All right. When blood vessels constrict does that have the effect of raising or lowering blood pressure?

A. It would raise blood pressure.

Q. And it certainly --

A. Now --

Q. Go ahead.

A. -- provided that there are not compensatory mechanisms that would counteract the increase in blood pressure.

Q. And what you're saying is that as we all go through our daily lives, it's certainly appropriate that from time to time our blood pressure be raised?

A. That's right.

Q. But it is not a good thing for our blood pressures to be raised constantly, is it?

MR. ALLINDER: Object to the form.

A. Depends what your starting blood pressure is.

Q. Well is there a concern in the health community about blood pressure, high blood pressure?

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A. There is.
Q. All right. Has that concern existed for a long, long time?
A. Yes, it has.
Q. Did it exist back in the 50s?
A. Yes, it did.
Q. And apparently some studies had indicated that nicotine would have the effect of raising blood pressure?
A. Yes, that's true.
Q. And some investigators had apparently voiced concern that heavy smokers who were ingesting nicotine through smoke might well suffer adverse health effects due to increased blood pressure?
A. There were some who thought so.
Q. And Dr. Little as one of his major points was taking some issue with whether or not nicotine would in fact constrict blood vessels and therefore raise blood pressure?
A. No, what he's saying it's not true for all people but occurs only in certain people under certain conditions. For all I know that's true.
Q. Then he goes on to say in point number 5 that some experiments indicate that nicotine may actually dilate rather than constrict blood vessels; correct?

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A. That's what he says.
Q. Now is that the majority view or the minority view with respect to the effects of nicotine on blood pressure?
MR. ALLINDER: Excuse me. I assume you're asking effective 1957?
MR. GILL: Yes.
MR. ALLINDER: Okay. Not presently?
A. I don't know. I'm not an expert in that, I don't think I'm competent to discuss it appropriately.
Q. This December 16, 1957 press release is another of those in which Dr. Little takes issue with the cause and effect relationship between smoking and health?
MR. ALLINDER: Object to the form.
Q. True?
A. That is true.
Q. And this might be another of the shots of insulin to which Dr. Brady referred in 1962; true?
MR. ALLINDER: Object to the form.
A. I don't know exactly what stimulated this press release, whether it was in response to something or -- or not.
Q. Well it does state in the second paragraph of

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page 1 that broad and specific accusations and claims of harmful effects from tobacco have been made? That's attributed to Dr. Little.

A. That's true.

MR. ALLINDER: Excuse me. Was that a question, Dick?

MR. GILL: Yes.

MR. ALLINDER: Okay. Object to the form.

Q. And to the extent that broad and specific accusations and claims of harmful effects from tobacco have been made, those might well be considered brush fires as far as the tobacco industry is concerned?

MR. ALLINDER: Object to the form.

A. I don't have any problems with that.

Q. And by disputing the validity of those claims Dr. Little through this press release may be shooting some insulin into the patient, as described by Dr. Brady?

MR. ALLINDER: Object to the form.

A. It's poetic, but may be appropriate.

Q. And the patient to which Dr. Brady referred in his metaphor was the tobacco industry --

MR. ALLINDER: Object to the form.

Q. -- and its public image?

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MR. ALLINDER: Excuse me. Object to the form.

Q. True?

MR. ALLINDER: Same objection.

A. I would in general go along with that.

THE WITNESS: Could we break for a moment?

MR. GILL: Sure.

MR. ALLINDER: Another 10 minutes?

(Recess from 11:20 to 11:25 a.m.)

(Plaintiffs' Exhibit 3508 marked for identification.)

BY MR. GILL:

Q. Dr. Rubin, did you review Exhibit 3508 in preparation for this deposition?

A. Yes, I did.

Q. This is a report on a visit to the United States and Canada dated April 17 through May 12, 1958 by three representatives of BATCO Limited; is that correct?

MR. ALLINDER: Objection to the form.

A. That's what it says.

Q. Apparently the authors are H. R. Bentley, D. G. I. Felton, and W. W. Reid; correct?

A. That's correct.

Q. Have you seen those names in any of the other

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documents that you've reviewed in this case or any other tobacco case that you've worked on?

A. I don't remember.

Q. Now you understand that BATCO Limited is a tobacco company based in England that is one of the defendants in this case?

MR. ALLINDER: Object to the form.

A. That's my understanding.

Q. And back at the time that this report was prepared in 1958 BATCO Limited owned the Brown & Williamson Tobacco Company, another defendant in this case?

MR. ALLINDER: Object to the form.

Q. You understand that?

MR. ALLINDER: Same objection.

A. If you say so, I will accept it.

Q. Now if you would look at what is marked at page 2 of this report that's Exhibit 3508, it's got a number 2 at the top of the page, are you with me?

A. I'm with you.

Q. All right. About halfway down on that page there is a reference to a topic heading designated as, quote, "'CAUSATION' OF LUNG CANCER," unquote. Do you see that?

A. I do.

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Q. The authors state, quote, "With one exception (H.S.N. Greene) the individuals whom we met believed that smoking causes lung cancer if by 'causation' we mean any chain of events which leads finally to lung cancer and which involves smoking as an indispensable link." Did I read that correctly?

A. You did.

Q. So the authors are indicating that they had conversations with a number of individuals during their trip to the United States during which the discussion of smoking as a cause of lung cancer arose?

MR. ALLINDER: Objection to the form.

Q. Is that how you read it?

A. That's how I read it.

Q. Now I take it you would agree with the characterization by the authors that smoking does cause lung cancer if by causation is meant any chain of events which leads finally to lung cancer and which involves smoking as an indispensable link; true?

A. True, that's what it says.

Q. And you would agree with that statement; correct?

MR. ALLINDER: Object to the form.

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A. I agreed with it.
Q. You've agreed with that statement for a long, long time in your professional medical career?
A. That's correct.
Q. Now on the first page after the cover sheet of Exhibit 3508 there is an indication of the itinerary of the authors with respect to their trip to the United States between April 17 and May 12 of 1958; correct?
A. That is correct.
Q. Now the only person that the authors excepted from agreement with the proposition that smoking causes lung cancer in terms of it finally leading to lung cancer as an indispensable link, only a gentleman by the name of H. S. N. Greene; do you recall that?
MR. ALLINDER: Object to the form.
A. That's Harry Greene.
Q. You may know Harry Greene, but I haven't met Dr. Greene.
A. I don't think that Dr. Greene is with us any more.
Q. All right.
A. But Harry was a very well-known professor of pathology.

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Q. And it indicates on the second page of the Exhibit that this Dr. Greene is associated with Yale University; correct?

A. Yeah. Yes.

Q. And that's your understanding as well, I take it, that Dr. Greene was associated with Yale University?

A. Correct.

Q. So the one person who excepted from this statement linking smoking to lung cancer was not a representative of the tobacco industry but happened to be a representative of Yale University?

A. No, he's not a representative. Every investigator speaks for himself with scientific views, he does not speak for the institution.

Q. All right. Let's just say Dr. Greene was not associated directly with the tobacco industry.

A. No, he --

MR. ALLINDER: Object to the form.

A. Dr. Greene was a professor of pathology at Yale, and to my knowledge had no relationship, any particular relationship to the tobacco industry.

Q. Now many of the individuals with whom the BATCO delegation met during their trip were in fact associated with the tobacco industry; correct, at

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least according to the itinerary on page 2?
A. That's what it says, yeah.
Q. The authors of Exhibit 3508 met with three representatives of the American Tobacco Company; correct?
A. Correct.
MR. ALLINDER: Excuse me.
THE WITNESS: Oh.
MR. ALLINDER: Object to the form.
Q. One of whom was a Dr. Harlan. Are you familiar with him?
A. I've come across the name. I don't remember exactly what he did.
Q. Was he a research director at American Tobacco Company back in the 50s?
MR. ALLINDER: Object to the form.
A. If you say so, I have no objection to that.
Q. All right. On the 23rd of April apparently the authors met with representatives of the Liggett & Myers tobacco company, and both of those representatives were doctors?
A. That's what it says.
Q. And then on the 24th of April the authors met with the Philip Morris company representatives; correct?

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A. Correct.
Q. One of those was a -- listed as a Mr. R. B. Seligman?
A. Seligman.
Q. Seligman. He's a member of the research department at Philip Morris; true?
MR. ALLINDER: Objection to form.
A. I don't know, but will --
Q. According to the documents you've reviewed?
A. -- willing to accept it.
Q. Then on the 28th of April the authors of this report met with representatives of the TIRC in New York. You see that?
A. I see it.
Q. And on that date they apparently met with Mr. Hoyt who we know is Dr. Hoyt, one of the associate directors of the TIRC during the 50s?
MR. PURDY: Yeah.
MR. ALLINDER: Object as -- object to the form.
MR. PURDY: And let me again, counsel, not to belabor but you keep saying "met with," and I want to reassert just to make sure it's clear that I object to the form because I think the document speaks for itself.

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MR. GILL: That's fine.

MR. ALLINDER: And I don't understand that you're asking him to independently confirm the facts that are stated on here.

MR. PURDY: Right, that's --

MR. GILL: Yes.

MR. PURDY: -- that's my only point.

MR. ALLINDER: But I have a separate basis for the objection to the last question that I made

BY MR. GILL:

Q. Now obviously, Dr. Rubin, I can't expect you to independently confirm these meetings because there's no way that you can do that, but we're simply going through what the authors of this document allege occurred during their trip; you understand that?

A. I do.

Q. They were alleging that they met with several individuals who believed that smoking caused lung cancer if by causation was meant events which led finally to lung cancer and which involved smoking as an indispensable link; correct?

A. Correct.

Q. And of the individuals that the authors indicate they met with on that subject, according to the authors the only individual who disagreed was H. S.

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N. Greene?

A. That's what it says.

Q. Okay. Now going back to page 2 of the itinerary, the authors' itinerary also included a meeting at TIRC in New York on May 8; correct?

A. It says New York University on May 8th.

Q. And look below that.

A. And then TIRC, yes.

Q. Okay. And with respect to TIRC, the itinerary indicates that the authors were to meet with Dr. Little and Dr. Hockett on that date.

A. That's correct.

Q. And then on the 10th of May the authors were scheduled to meet with the Scientific Advisory Board of TIRC; true?

COURT REPORTER: Your answer?

A. True.

Q. Now if in fact the authors met with Doctors Little and Hockett on May 8 and discussed with them their views on smoking as a cause of lung cancer, then presumably their views are listed on the -- on the next page of the report in terms of this relationship between smoking and lung cancer with tobacco being an indispensable link in the formation of lung cancer; true?

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A. If you accept -- if you accept the accuracy of the first paragraph under causation of cancer, that would be true.

Q. Now if Dr. Little told the -- the authors of this report, these representatives of the BATCO tobacco company, that he believed smoking caused lung cancer, that would be a view totally inconsistent with the public pronouncements of Dr. Little on that subject during the 50s, the 60s, and the early 70s?

MR. ALLINDER: Objection to the form.

Q. True?

A. His public posture was that it had not been proved, and if he told these gentlemen that he believed that it had been proved, that would be inconsistent.

Q. And even if he told these gentlemen that he believed smoking caused lung cancer if causation meant any chain of events which led finally to lung cancer and which involved smoking as an indispensable link, that would be a damaging admission with respect to the interests of the tobacco company?

MR. ALLINDER: Object to the form.

Q. True?

A. Well I don't know if it would be damaging. I'd have to think about that.

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Q. Well smokers would not be reassured in 1958 to find out that Dr. Little, the scientific director of the TIRC, was now of the opinion that smoking did cause lung cancer in terms of it being an indispensable link in the formation of that disease, would they?

MR. ALLINDER: Object to the form.

A. I don't think that smokers would be happy to hear that, no.

Q. And if there was publicity attached to a statement to that effect by Dr. Little in his position of being the scientific director of an organization that was owned by the cigarette companies and sponsoring research on the issue, that might very well have a very damaging public relations effect on the interests of the tobacco industry; true?

MR. ALLINDER: Object to the form.

A. Well I'm not an expert on public relations or how damaging it could be.

Q. That would be --

A. I --

Q. That would be more than a brush fire, wouldn't it?

MR. ALLINDER: Object to the form.

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A. You'll have to ask these questions of somebody who is more familiar either with fires or with public relations.

Q. Well you don't know of any reason why the authors of this report who were scientists employed by a British tobacco company would have had any reason to misquote Dr. Little, do you?

MR. ALLINDER: Object to the form.

A. I have no reason to believe that. On the other hand, it's entirely possible that this is sort of a -- an overall summary which was not intended for legal purposes. It's possible that Dr. Little said to them something to the effect that there is a lot of statistical evidence out there but that really doesn't prove it; although I think the statistical evidence may be persuasive, nevertheless causation requires A, B, C.

Q. You're totally speculating now?

A. You understand --

MR. ALLINDER: Excuse me. Please let him finish.

A. Yeah. I don't really know and I don't know honestly whether it's appropriate or accurate to take that first paragraph absolutely literally or whether it is an overall summary impressionistic in nature

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and that there are modifications and additions to -- to this view by individuals such as Doctors Little and Dr. Hockett. I simply don't know.

Q. These meetings that occurred during this trip appear to have been private conferences; true?

MR. ALLINDER: Object to the form.

A. Well I don't know who was present, whether they were one-on-one or whether there were groups of people. I --

Q. But certainly not open to the public, or reporters?

MR. ALLINDER: Excuse me, Dick. Please let him finish. You guys are starting to run over each other, and I would really like to have the record be complete, so if you would, please.

Q. Certainly no indication that the public or any representative of the public was attending these meetings between the BATCO scientists and representatives of the tobacco industry or TIRC?

A. Would not seem to me that these were public meetings.

Q. And certainly this does not appear to be a legal document in the sense that the authors ever expected that this document would become an Exhibit in a lawsuit?

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MR. ALLINDER: Object to the form.
Q. No indication of that?
MR. ALLINDER: Same objection.
A. There's no indication. The language is not precise and has a general type of style to it, and so it's clearly meant as in impressionistic report rather than a legal document.
Q. Well the style of the report apparently going to the superiors of these scientists back at BATCO appears to be very candid; does it not?
MR. ALLINDER: Object to the form.
A. I think so.
Q. And if Dr. Little said words that in substance conveyed the concept that he accepted that smoking caused lung cancer in terms of it being an indispensable link in the formation of that disease, that statement was presumably made in a candid fashion by Dr. Little to these representatives of another tobacco company; true?
MR. ALLINDER: Object to the form.
A. I don't know. I don't know what Dr. Little told these people. This is their interpretation of many interviews with many people who probably expressed their opinions in different ways. Dr. Little may have accepted certain statistical associations and

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said that although smoking plays a role it's not the only role, there are other factors. That was -- was part of his posture. I think what you have here is an overall summary judgment of a large series of interviews, and I have no reason to believe that as an overall impression of the type of response that he got to his questions that it was not accurate.

Q. Well, if Dr. Little had candidly made this admission to these three representatives of BATCO concerning cigarettes causing lung cancer, then that would demonstrate the insincerity of his public statements questioning the existence of a continuing controversy; true?

MR. ALLINDER: Objection to the form.

MR. PURDY: Object to the form. It specifically calls for speculation?

A. I don't think I'd agree with you. His public posture was that the issue was still open and that statistical associations did not necessarily prove causation. That -- that was basically Little's public posture. He didn't accept some of the epidemiologic evidence, and some of it that was out there might not prove a cause and effect relationship. Now whether or not he conveyed the nuances of his position to these people I don't

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know.

Q. Well in the statement --

A. I mean I don't think it's correct to assume that each and every person on this list, on page 2, said to these gentlemen, I believe that cigarette smoking is an indispensable link, et cetera, et cetera. This is their overall impression of many interviews, and probably represents a -- a consensus of all of those people that they talked to.

Q. But the authors were clear that they understood that Dr. Greene wasn't part of that consensus because they point that out in the sentence?

A. Well you have to know how -- what Harry Greene had to say and what Harry Greene's orientation was. He was a very different kind of a person, sort of cantankerous, very opinionated, and very bright. Harry Greene was of the opinion, with which I don't agree, that if in his model systems he could not produce an effect such as putting some tissue into the anterior chamber of the eye, letting it grow in a rabbit there, and other experiments where you expose tissues to toxins or carcinogens and then implant them in animals and then if it's carcinogenic, they should grow, he was one of the pioneers of that --

Q. You digressed, Doctor.

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A. But what I'm saying is that he felt that if he couldn't produce cancer or effects like cancer in his model systems, then the phenomenon didn't exist. And he was very vociferous in this view in areas quite apart from tobacco, so that Harry Greene would take exception in a very striking way to this conclusion is not surprising.

Q. And apparently if any of the other individuals that the three authors met with were taking disagreement to the proposition that smoking caused lung cancer, they didn't express it strikingly enough that the authors understood them?

MR. ALLINDER: Objection to the form.

A. Look, I'm not saying what Dr. Little told them, but this one paragraph and their definition may not include all of the nuances that every single person on that list expressed.

Q. And the statement that the authors attribute to these people is a long, long way from the public statements of Dr. Little on this subject; true?

MR. ALLINDER: Object to the form.

Q. There's nothing in the statement that reflects any nuances about open controversies and statistical evidence not being enough, is there?

MR. ALLINDER: Object to the form.

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A. I would agree with you.
Q. And the authors attribute this belief that smoking causes lung cancer not only to Dr. Little and Dr. Hockett of the TIRC but to the Scientific Advisory Board?
A. That's correct.
MR. ALLINDER: Object to the form.
Q. And to various scientific personnel at a number of tobacco companies?
A. Well --
MR. ALLINDER: Object to the form.
Q. Correct?
A. There's -- he actually mentions that the SAB of TIRC and the group he met at the National Cancer Institute broadly take the view that causation is likely to be indirect, they -- and then they talked about several hypothetical means by which this could occur were proposed, so --
Q. It may be indirect but it still may lead inevitably to lung cancer --
A. Well that's what they're saying.
Q. -- as an indispensable link; correct?
MR. ALLINDER: Excuse me. You have to let him finish. Object to the form.
A. Well what he's saying is that they broadly take

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the view that causation, which means positive that cigarette smoking in some way causes lung cancer, they're -- that's what they're saying, broadly take the view that it does cause lung cancer, but that the causation is likely to be indirect.

Q. And that would be of little solace to a smoker who succumbed to the ravages of lung cancer that smoking had caused an only indirect link as opposed to a direct link; true?

MR. ALLINDER: Object to the form.

A. I don't think it would make much difference, to die from lung cancer whether it's direct or indirect.

Q. And even when presented with this evidence that Dr. Little's public positions may have been inconsistent with respect to his position on causation, you're still not prepared to reevaluate your view of whether Dr. Little was influenced by the potential conflict of interest that he faced in receiving his salary from the cigarette industry?

MR. PURDY: Object to the form.

Q. Is that the case?

A. I don't think that this document says anything about Dr. Little's sincerity. Dr. Little may have complained to him that he considers statistical evidence to be suggestive, he may have said it in a

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nuanced way, but that he would require further evidence, for instance, like Dr. Greene would require for a cause and effect relationship. These gentlemen who have written this may have just included Dr. Little, therefore, as someone who accepts the causation or the link between cigarettes and cancer even though he may have expressed certain qualifications.

Q. And the three authors may have accurately recounted Dr. Little's position on that subject; true?

MR. ALLINDER: Object to the form, asked and answered.

A. That's possible.

Q. If you'd look at what is numbered as page 6 of Exhibit 3508, there's a page 6 at the top, it's actually the 7th page of the Exhibit, but the second paragraph on that page reads, quote, "It is perhaps significant of the trend of thought in TIRC that we were told by Hockett that, in addition to work supported by grants which can be freely published, the SAB is now considering contracting out biological work on a commercial basis. This at first would be exploratory work on quantitative carcino" -- "carcino" --

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A. Carcinogenicity.

Q. -- "carcinogenicity but the change of principle is that for the first time the line of research and publication policy would be completely in the hands of the CAB (sic)." Did I read that correctly?

A. No. SAB.

Q. I'm sorry, I keep saying CAB (sic). SAB. Scientific Advisory Board.

A. Yes.

Q. Now the authors got the impression that the contract work would be completely in the hand of the SAB and apparently attached some significance to that; correct?

MR. ALLINDER: Object to the form.

A. Give me your question again, please.

Q. The authors of this report apparently attached some significance to the fact that TIRC was going to embark upon contract research that would be, quote, "completely in the hands of the SAB," unquote?

A. That's what --

MR. ALLINDER: Object to the form.

A. That's what it says.

Q. And as it turned out, there was a good deal of contract research funded by the SAB that had nothing to do with the SAB; correct?

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MR. ALLINDER: Object to the form.

MR. PURDY: I'm sorry. Could you just repeat it.

THE WITNESS: Yeah, --

MR. GILL: Sure.

THE WITNESS: -- please read that.

(The record was read by the reporter.)

MR. ALLINDER: Object to the form.

A. I --

Q. Didn't we discuss yesterday contract research under special projects that would be solely in the hands of the scientific director of the CTR in terms of recommendations to the cigarette companies as to whether they should fund or not fund those special projects?

A. That's something completely different. Those were not SAB-sponsored. The -- the SAB program reviewed contracts that were supported by the SAB program, but the special projects were not funded by the regular CTR budget, they were -- it was a separate program which was only administered fiscally by the CTR.

Q. So what you're --

A. So it's a different program, it's not what he's talking about here.

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Q. And that program avoided any review process by the SAB?

MR. ALLINDER: Object to the --

Q. Correct?

MR. ALLINDER: Object to the form.

A. Well "avoided" is a -- is not exactly the term. I would say it's a -- was a program that was separate from the SAB program.

Q. In going back to page number 6 of Exhibit 3508. The authors specifically note their understanding that the grant research can be freely published. Do you see that?

A. I see it.

Q. And then the authors juxtaposed that situation with that of contract research that the authors indicate would be in the hands of the SAB. Do you see that also?

A. It says completely in the hands of the SAB.

Q. And with the implication that with respect to the contract research there would not be total freedom with respect to publication of the paper from the -- from the researchers' point of view?

MR. ALLINDER: Object to the form.

A. Well this doesn't make any mention of that. As I indicated to you before, contract research in

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general is different from grant research and may or may not include restrictions on publications. Sometimes it does, sometimes it doesn't. I don't think you can say anything from this paragraph regarding what agreements would be reached in any contracts that were reviewed by the SAB.

MR. GILL: I think that's a good place to break for lunch.

MR. ALLINDER: Okay. Before we set our restart time, how are we doing on our clock?

(Off-the-record discussion.)

(Luncheon recess from 11:59 a.m. to 12:45 p.m.)

A F T E R N O O N S E S S I O N

(Plaintiffs' Exhibit 3509 marked for identification.)

BY MR. GILL:

Q. Dr. Rubin, showing you Exhibit 3509, is this another press release that you reviewed in preparation for your deposition today?

A. I believe it is.

Q. This is another press release by TIRC; is it not?

A. It is.

Q. Now we're in January of 1959?

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A. Correct.
Q. This would be about 8 months or so after the visit to America of the three B.A.T. scientists who authored Exhibit 3508; correct?
MR. ALLINDER: Object to the form.
A. Correct.
Q. Now in this press release by TIRC Dr. Little is quoted again; correct, on page 1?
A. Yes.
Q. He's quoted as saying, quote, "exponents of the tobacco theory have failed since the first public propaganda for that theory in 1953 to produce any new evidence that provide any qualitatively different support beyond the original type of statistical association," end of quote. Did I read that correctly?
A. You did.
Q. So Dr. Little is again disparaging the significance of the reports from 1953 of a relationship between smoking and disease; true?
MR. ALLINDER: Well excuse me. Object to the form.
A. Well, I don't see the word "disparaging".
Q. How about the word "propaganda"?
A. That's an inflammatory term.

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Q. So that would be a pejorative term; would it not?

MR. ALLINDER: Object to the --

A. Yes.

MR. ALLINDER: Object to the form.

Q. And he uses that term with reference to the theory that smoking causes disease; correct?

MR. ALLINDER: Object to the form.

A. I didn't get that question.

Q. He refers to exponents of the tobacco theory; correct?

A. Yes.

Q. And he is referring to the theory that tobacco causes disease?

A. Yes.

MR. ALLINDER: Object to the form.

Q. And then he references that theory in terms of it being propaganda?

MR. ALLINDER: Object to the form.

A. No, he -- propaganda refers to the dissemination --

Q. Of the theory?

A. -- of the theory.

Q. And he suggests that there is no support for the theory beyond the original type of statistical

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association?

MR. ALLINDER: Object to the form.

Q. Correct?

A. That's correct.

Q. Now actually there was more support for the theory that tobacco smoking caused cancer than merely the epidemiological reports; correct?

MR. ALLINDER: Object to the form.

A. Not really.

Q. Well the mouse skin painting experiments were not epidemiological reports; were they, or studies?

A. If you want to discuss with me the significance of different types of biological experiment, I would be pleased to do so, and I'm speaking as one who is entirely persuaded that smoking tobacco causes cancer of the lung. Nevertheless, there is such a huge difference between taking concentrated materials from tobacco condensates and applying it to the skin of a rodent to the situation involved in the inhalation of gaseous and particulate phase matter greatly diluted with air into the respiratory system.

Q. But Dr. Rubin, this is a narrow question and we only have a limited amount of time left. The skin painting studies were not epidemiological studies, were they?

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MR. ALLINDER: Object to the form.

A. They were not.

Q. They were biological studies; true?

A. They were.

Q. And the authors of those studies suggested that the results of those studies implicated smoking with disease?

MR. ALLINDER: Object to the form.

A. That was the purpose of the study.

Q. Now the statement attributed to Dr. Little on page 1 of Exhibit 3509 in January of 59 about the tobacco theory --

A. You'll have to --

MR. ALLINDER: Give him the reference again, please.

Q. I'm sorry, I'll start again.

A. What page?

Q. Page 1 of Exhibit 3509.

A. Oh, yes.

Q. That's what we've been talking about. The position attributed to Dr. Little in this quote from January of 59 is definitely at odds with the position that was attributed to Dr. Little about the tobacco theory by the authors of the B.A.T. report that was 3508; true?

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MR. ALLINDER: Object to the form.

A. I've indicated to you before that the B.A.T. -- the first paragraph of that B.A.T. report under Causation of Cancer represents an impressionistic summary of the views of many people and certainly was not re-circulated to those people for their approval or editing. We don't really know what Dr. Little said to those three gentlemen and whether he expressed qualifications or pointed out that it -- statistical support was still the only evidence and that one had to consider other factors. We really don't know. To accept a statement in that first paragraph as the literal expression by all of the people whom they visited I think is stretching it a bit too far.

Q. But Dr. Rubin, all I'm asking is: The statement that was attributed to Dr. Little in the report by the three B.A.T. scientists, that statement as it stands is at odds with the position that is attributed to Dr. Little in the press release of January 59; true?

MR. ALLINDER: Object --

A. Where --

MR. ALLINDER: Object to the -- object to the form.

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A. Where we differ is in the interpretation that that statement by the three gentlemen from England is purported to be a direct statement and an accurate statement of Dr. Little's views. There is no reason to believe that whatsoever. And I have no reason to believe that Dr. Little had inconsistent views.

Q. But if the view of the tobacco causation issue attributed to Dr. Little by the three B.A.T. scientists was an accurate view, then that view would be greatly at odds with the position asserted in the January of 59 press release on the same subject; correct?

MR. ALLINDER: Object to the form.

A. Well if one accepts all of your hypothetical assumptions as accurate, there would be some discrepancy.

Q. There would be a major discrepancy; would there not?

MR. ALLINDER: Object to the form.

A. You know, one could believe that the statistical evidence is accurate and still make a statement that since 1953 the only further evidence is statistical in nature. That's what it says there. So one could make that statement and still believe that the statistical evidence is accurate.

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Q. But clearly Dr. Little in the January of 59 press release makes a pejorative reference to publication of the tobacco theory based upon the epidemiological studies that were done in 53.

MR. ALLINDER: Object to the form.

A. It is a pejorative reference to the dissemination of that information.

Q. And the conclusion reached in that information was that smoking caused lung cancer?

MR. ALLINDER: Object to the form.

Q. True?

A. I would agree with that.

Q. And the conclusion attributed to Dr. Little by the three B.A.T. scientists was that smoking caused lung cancer; true?

MR. ALLINDER: Object to the form.

A. Indirectly.

(Plaintiffs' Exhibit 3510 marked for identification.)

Q. Dr. Rubin, showing you a report that has been marked as Exhibit 3510, is this another one of the documents that you reviewed in preparation for your deposition today?

A. I believe I did.

Q. Now this is another report by certain BATCO

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scientists with respect to a visit that they made to the United States in 1964, October of 64; correct?

MR. ALLINDER: Object to the form.

Q. I think it shows the date on the face page.

A. I see -- I see the date is 1964. I don't see the B.A.T. scientists here. I'm just trying to find --

Q. If you look at what's denominated as page 1 of the actual report, it indicates "We were in U.S.A. from 10 September to 15 October "--

A. Yeah.

Q. -- "1964 and had discussions with" various people.

A. Right. That's what it says.

MR. ALLINDER: Does your question have to do with whether these were B.A.T. representatives?

Q. Yes. Is it your understanding that this is a report by BATCO representatives?

MR. ALLINDER: Object to the form.

A. Well I have no reason to doubt that.

Q. Now if you would look at page 18 of the report do you see a reference there to the Council for Tobacco Research?

A. I do.

Q. The authors indicate that a Dr. Andervant of the

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NCI has been persuaded by Dr. Little to join the CTR Scientific Advisory Board. Do you see that?

A. I see it.

Q. And then there's a reference that Dr. Andervant is the only person to have accepted an invitation to join the board in recent years. Do you see that?

A. I do.

Q. Did you note that in your -- your review of the composition of the SAB over the years that during this time frame in the early 60s there were few new members added to the SAB?

MR. ALLINDER: Objection to form.

A. Yeah, in the early years it's my understanding that the period of time after the institution of the CTR that the SAB was considered sufficiently large and experienced to handle the grant applications and that there was no need to enlarge it significantly at that time. Later on as the size of the program became larger and the number of applications enlarged, it was necessary to enlarge the board.

Q. But this is 10 years into the life of the TIRC in 1964; correct?

A. That's correct.

Q. Now the author goes on in that same paragraph in the last sentence of the paragraph to state: "CTR

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supports only fundamental research of little relevance to present day problems." Do you see that?

A. That's what it says.

Q. And you disagree with the observation that fundamental research would be of little relevance to present day tobacco health problems; correct?

A. I would disagree that basic research is not relevant to problems of tobacco and health.

Q. And apparently it was the author's view that the CTR was involved mostly in fundamental research or basic research as early as 1964?

A. This is the statement by the English gentleman.

Q. And if fundamental or basic research was indeed valuable with respect to understanding the cause and effect relationship between tobacco smoking and health, then presumably it would have been of value to the tobacco companies that produced the cigarettes; true?

MR. ALLINDER: Object to the form.

A. Would you please repeat that?

MR. GILL: Yes. Would you read it back, please.

(The record was read by the reporter.)

A. That would be true, and it would be valuable for all concerned with problems of tobacco and health.

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Q. And so by sponsoring such research, assuming that it did have valuable -- value with respect to the issue of tobacco and health, all of the sponsoring tobacco companies would be getting collectively the benefit of whatever value resulted?

MR. ALLINDER: Object to the form.

A. Well --

Q. Assuming that their employees reviewed the studies?

MR. ALLINDER: Same objection.

A. Well, they, along with everyone else, would be getting the benefit. The -- the results of these studies are in the public domain, and whoever would be interested in them would get the benefit of those studies.

Q. And all of these tobacco companies were competing against each other with respect to the sale of cigarettes during this period of time between 1954 and 1964; correct?

MR. ALLINDER: Object to the form.

A. Well I'm not an expert on cigarette competition, but I have every reason to believe that they competed against each other.

Q. And to the extent that anyone of them could have developed a safer cigarette that would not be

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implicated in causing disease, that would have afforded that particular manufacturer a benefit in the marketplace?

MR. ALLINDER: Object to the form.

Q. Correct?

A. Well again, I'm not an expert, but that would probably depend upon other factors. For instance, let's say that a safe cigarette in terms of cancer had a unpleasant taste. That might not therefore be an advantage. Or let's say that it didn't give the smoker nicotine that he might have wanted or might not have wanted, I don't know. That might not have resulted in a safe cigarette or maybe a cigarette that was hard to draw would not sell. I -- I'm not an expert on these things, but I could understand that just making a cigarette safe from one point of view might not be of competitive advantage if other factors interfered.

Q. But assuming that that manufacturer with the capability of developing a safer cigarette was able to do so with respect to a commercially-acceptable cigarette in terms of its appeal to smokers, that manufacturer would have a huge advantage over the competition; true?

MR. ALLINDER: Object to the form.

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A. Well I would think so, yes.
Q. If you'd look at page 16 of Exhibit 3510. Right in the middle of that page there is a paragraph that reads, quote, "The basic point is, however, that the biological research, except possibly for some work by A. D. Little Co. for L & M, is short-term and not cancer research, primarily for the legal reasons mentioned above." Did I read that correctly?
A. You did.
Q. Was it your understanding that as of 1964 CTR was doing any extensive biological research in terms of funding such projects?
MR. ALLINDER: Object to the form.
A. Which projects are you referring to? It isn't clear to me.
Q. You've -- having -- let me strike that.
You've reviewed, at least to some extent, the research work that was supported by CTR grants since 1954?
A. Yes, I have.
Q. And with respect to the time frame that we're now involved with with this Exhibit, 1964, are you aware of any extensive biological research that was being funded by CTR money?
A. There was a lot of biological research being

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funded by CTR.

Q. So apparently this author in mentioning only that the A. D. Little Company was doing significant biological research for Liggett & Myers was unaware of the extent of the CTR biological research?

MR. ALLINDER: Object to the form.

A. May have been.

Q. Can you think offhand based upon your review of the documents of specific research studies of a biological nature that had been funded by CTR as of 1964?

MR. ALLINDER: Object to the form.

A. I don't have my notes in front of me and the dates would escape me. I -- I can't classify the kind of research at this moment according to the dates. I am perfectly willing to discuss with you the types of biological research that were under -- undertaken by grantees from the CTR, but I don't think I can pin the exact dates down without access to my notes.

Q. If you'd look at page 30 of Exhibit 3510.

MR. ALLINDER: Sorry, Dick, 30?

MR. GILL: Yes.

MR. ALLINDER: 30.

MR. GILL: 30.

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A. Yes.
Q. Approximately in the middle of the page there is a paragraph that reads, "The recent Annual Report by Dr. Little was severely criticized by the U.S. Surgeon General at a Washington press conference. Dr. Kotin," K-o-t-i-n, "was also highly critical of it and talked privately of resigning from the SAB if another report of the same nature is going to be published next year." Now did I read that part correctly?
A. You did.
Q. Did you review the 1963 annual report of the CTR?
A. I did.
Q. And was the CTR's annual report in terms of its statements about the smoking/health/causation issue at odds with the findings by the U.S. Surgeon General's committee, Blue Ribbon Committee?
A. I don't recall.
MR. ALLINDER: Excuse me. Objection to the form.
A. I don't recall.
Q. Do you recall a Dr. Kotin?
A. Personally?
Q. Being involved in this -- this issue of smoking

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and health?

A. You mean do I recall personally or do I recall that he was a member of the SAB?

Q. Based upon your review of the documents do you recall that?

A. Yes.

Q. Do you know why he might have been threatening to resign from the SAB if another report similar to the 63 report was issued?

A. I have no idea.

Q. Is it reasonable to infer from this statement that Dr. Kotin was upset that the 63 annual report of the CTR was not credible in virtue -- by virtue of the findings of the Surgeon General's report?

MR. ALLINDER: Objection to the form.

A. All I know is what it says here. It says Dr. Kotin was highly critical of it. I don't know more about that.

Q. Did you ever in your work on this case, Dr. Rubin, compare the two documents, the 63 CTR report in terms of its position on the causation issue in relation to the findings made by the Surgeon General's report?

A. I may or may not have. I just don't recall.

Q. You wouldn't be surprised if the position

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asserted by the 63 CTR report on the causation issue was starkly at odds with the findings made by the Surgeon General's report, would you?

MR. ALLINDER: Objection to the form.

A. As I have mentioned before, nothing surprises me.

Q. Well if it was starkly at odds with the findings, you certainly know what the findings were of the Surgeon General's report in 1964?

MR. ALLINDER: Objection to the --

Q. Correct?

MR. ALLINDER: Objection to the form.

A. In general I do.

Q. And if the CTR annual report from 63 was starkly at odds with those findings, that simply would have been consistent with all of the prior public pronouncements of the CTR on the subject of tobacco, health and causation?

MR. ALLINDER: Objection to the form.

Q. Correct?

A. Not quite. The position of Dr. Little was not that smoking didn't cause cancer, but that it had not been proved biologically. The position of the Surgeon General was that tobacco smoking caused cancer of the lung. To be at odds with that, Dr.

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Little's position would have had to have been that tobacco smoking does not cause cancer of the lung. That was not his position. His position was that it had not been proved biologically to his satisfaction. That was not the position taken by the Surgeon General who felt that enough evidence had accumulated so that as a public health official he could authorize that statement.

Q. But certainly Dr. Little didn't feel that the -- that the causation between smoking and health had been satisfactorily proved based upon the epidemiological studies either, --

MR. ALLINDER: Objection.

Q. -- did he?

MR. ALLINDER: Objection to the form.

A. He had questions about it.

Q. Dr. Little was essentially saying that it was unknown whether or not smoking caused cancer and other health problems?

MR. ALLINDER: Objection to the form.

Q. True?

A. That's true.

MR. ALLINDER: Same objection.

Q. And that statement would certainly be at odds with the findings of the Surgeon General's report --

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MR. ALLINDER: Objection to the form.

Q. -- in 1964?

MR. ALLINDER: Same objection.

A. Well I would agree with you to the extent that the Surgeon General accepted the statistical association as a -- as valid and accepted the proposition that tobacco smoking causes cancer of the lung. Dr. Little was of the opinion that proposition had not been proved.

Q. And then the -- this paragraph that we've been referencing goes on to state, quote, "Dr. (sic) Hoyt was very pleased with the press coverage, frequently with misleading headlines, that the report received." Now Dr. Hoyt, of course, is one of the associate directors of the CTR at this time frame; correct?

MR. ALLINDER: Objection to the form, and you've misread the statement.

MR. GILL: Well let me try it again. If I did, I don't want to do that.

MR. ALLINDER: It's Mister.

Q. All right. It says "Mr. Hoyt was very pleased with the press coverage, frequently with misleading headlines, that the report received." Now Mr. Hoyt would be a reference to Dr. Hoyt who was an associate director of CTR at this time frame; correct?

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MR. ALLINDER: Objection.

A. That --

MR. ALLINDER: No foundation, misstatement of facts.

A. -- seems to be the case.

Q. And what Mr. Hoyt was apparently pleased with was the press coverage that the CTR's report received; correct?

MR. ALLINDER: Objection to the form.

A. I think it refers to the CTR report.

Q. So apparently the 1963 CTR report, at least in the view of Mr. Hoyt, got considerable press coverage?

A. Well I --

MR. ALLINDER: Excuse me. Are you done with the question? Objection to the form.

A. I can't tell you how much press coverage. All it says here was Mr. Hoyt was pleased. I don't know how much it would take to please Mr. Hoyt.

Q. But apparently he was pleased with the amount of press coverage for that report, whatever it took --

MR. ALLINDER: Objection.

Q. -- to please him?

MR. ALLINDER: Objection to the form.

A. According to the author of this document, Mr.

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Hoyt was very pleased.

Q. And apparently pleased with the press coverage for the 63 CTR annual report even though according to the author the press coverage often resulted in misleading headlines?

MR. ALLINDER: Object -- objection to the form.

Q. True?

A. That's what it says, misleading headlines.

Q. Yeah.

A. I don't know what those misleading headlines were.

Q. Now assuming that Dr. Hoyt, as an employee of CTR being paid by the tobacco industry, was nevertheless objective and in search for the truth, can you think of any reasons why he would have been pleased with misleading press coverage of the CTR's annual report?

MR. ALLINDER: Objection to the form.

A. It doesn't say here he was pleased with the misleading headlines. It says he was pleased with the -- with the press coverage, and then it describes the press coverage as frequently with misleading headlines. I don't know whether he liked the press coverage overall and he didn't like the misleading

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headlines or whether he liked it overall and was unconcerned about misleading headlines. Or another interpretation could be that he liked misleading headlines. I -- I don't see that it's clear at all here.

Q. All right. But there's certainly no indication from the authors that Dr. Hoyt was offended in some way by the misleading headlines, is there?

MR. ALLINDER: Objection to the form.

A. The document does not state that Mr. Hoyt, or I think Dr. Hoyt more properly, was offended by anything.

Q. Now the next paragraph reads, "While CTR is supposed to be relegated to a back room role, the lawyers' Policy Committee recently decided that Dr. Little should act on behalf of the industry in dealing with requests from the U.S. Department of Agriculture," then in parentheses, "(Dr." --

MR. ALLINDER: Tso.

Q. -- "Tso)" T-s-o, close paren, "for information about benzopyrene (sic), et cetera, in cigarette smoke." Did I read that correctly?

A. Yes, you did.

Q. Now --

MR. ALLINDER: I will make one exception,

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it's benzpyrene rather than benzopyrene, but that will come out. Could make a difference.

Q. Do you have any understanding of Dr. Little's role as scientific director of the CTR that would include taking instructions from lawyers acting as a policy committee on behalf of the tobacco industry?

MR. ALLINDER: Objection to the form.

A. This -- this simply seems to me to be a decision that Dr. Little should be a resource to respond to the United States Department of Agriculture for information about benzpyrene. I don't -- I don't know the circumstances, but apparently the United States Department of Agriculture wanted to know something about the presence of benzpyrene or -- in cigarettes or its concentration or distribution and that the lawyers or whoever it was did not feel competent in that area and requested Dr. Little to serve as a source of information because he was a scientist and they were not.

Q. And of course Dr. Little was presumably a scientist of impeachable integrity?

MR. ALLINDER: I think you meant to say unimpeachable integrity.

MR. GILL: Unimpeachable.

MR. ALLINDER: Object to the form. I knew

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that was an unintentional slip on your part.

MR. GILL: It was, but let me repeat the question.

THE WITNESS: Dr. Freud rears his ugly head.

MR. ALLINDER: Let him ask the question again.

BY MR. GILL:

Q. Dr. Little was supposedly someone who would speak on the subject of tobacco and health from a position of unimpeachable integrity; true?

MR. ALLINDER: Object to the form.

A. I think that's reasonable.

Q. And there certainly --

A. And borne out by the record.

Q. And we've talked about in the Frank Statement and in other documents the assertion by the tobacco industry that the scientific director of the TIRC and the CTR would be able to speak his mind on a totally independent basis on the subject of tobacco and health; true?

MR. ALLINDER: Object to the form.

A. I would agree with that.

Q. And in fact the public back at the time of the Frank Statement was assured that whatever scientific

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director was appointed would be of unimpeachable integrity and would in fact speak from the perspective of the public interest and not the interests of the tobacco companies?

MR. ALLINDER: Object to the form.

Q. True?

A. I don't think it was stated that way. The concept would be that he would speak his mind according to his own opinions.

Q. His own opinions --

A. And his --

Q. All right, go ahead.

A. Which one would have to consider as sincere.

Q. And his own opinions with respect to the aspects of the smoking/health/causation issue as they affected the public interest; correct?

MR. ALLINDER: Object to the form.

A. Whatever his opinions were --

Q. All right.

A. -- he would be expected to express them in a sincere and honest way.

Q. And in this instance Dr. Little is being directed by lawyers for the tobacco companies to speak on behalf of the tobacco companies?

MR. ALLINDER: Object to the form.

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A. It doesn't say that. It says dealing with requests. That means just transferring information.
Q. Well they didn't need Dr. Little to simply send over a packet of information to the Department of Agriculture, did they?
MR. ALLINDER: Object to the form, argumentative.
A. It says "dealing with requests". When requests came in they would be presumably referred to Dr. Little and he would dispose of them in a -- an appropriate fashion. I don't see anything more in that paragraph than that.
Q. And do you recognize that the requests for information about benzpyrene might very well require Dr. Little to not only transfer documents but actually address members of the Department of Agriculture on that subject?
MR. ALLINDER: Objection to the form.
A. In that paragraph it says "dealing with requests". I don't even know the nature of the requests or how Dr. Little would handle those, but it seems to me to be reasonable to have some person deal with requests for scientific information from a branch of the United States government.
Q. And benzpyrene is a carcinogen; is it not?

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MR. ALLINDER: Objection to the form.

A. It is a carcinogen.

Q. And it's present in tobacco smoke?

A. It is.

Q. And Dr. Little had previously publicly stated that there were no carcinogenic components of tobacco smoke as far as he understood?

MR. ALLINDER: Objection to the form.

A. Well you'll have to show me that document.

Q. You don't recall our -- our discussion about that document this morning?

A. A document where Dr. Little says that there are no carcinogenic components in tobacco smoke?

Q. A press release that we discussed this morning in which Dr. Little indicated that there were no known injurious substances in tobacco smoke?

MR. ALLINDER: Objection to the form.

A. Well you'll have to show that to me again, but even today, many years later, in the opinion of those who accept that cigarette smoking causes cancer of the lung, including myself, the precise components that are responsible remain unknown. It has not been proved that benzpyrene is the carcinogen that causes cancer of the lung. It is present in tobacco smoke, but its presence doesn't mean that it is the

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effective agent. It may be -- it may be. It may be in synergism with other agents, or it may be that there are more potent carcinogens that have not been identified and that benzpyrene is actually not an important player.

Q. But if --

A. We don't know.

Q. But if benzpyrene as a carcinogen is an active agent in the formation of cancer, then a conflict would arise between the interests of the tobacco companies and the interests of the smoking public with respect to the debate over the role of benzpyrene in disease; true?

MR. ALLINDER: Objection. Objection to the form.

A. I don't think I'd go along with that. Let me give you an example.

Q. All right, that's enough. I think you've answered it. But if benzpyrene were found to be an active agent in causing cancer, that would be a development that would be contrary to the interests of the cigarette manufacturers who produce cigarettes whose smoke generates benzpyrene; --

MR. ALLINDER: Objection to the form.

Q. -- correct.

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A. Someone who produces cigarettes would not want to advertise on a billboard that his product contained material that when painted on the skin of a rodent produced cancer.

Q. And in the same way that the development of information implicating benzpyrene in the formation of disease would be contrary to the interests of the tobacco industry, it might well be beneficial to the interests of smokers to know that?

MR. ALLINDER: Objection to the form.

Q. Correct?

A. I'm not sure that the individual smokers are in a position to evaluate the scientific evidence. As I told you, the presence of benzpyrene in cigarette smoke, which contains some 2000 or more different constituents, does not by itself mean that it is having any biological effect. It might. But it might not. And that would be a subject for research.

Q. But apparently the Department of Agriculture had some interest in determining whether or not benzpyrene might be an active agent in the development of disease?

MR. ALLINDER: Object to the form.

Q. Correct?

A. I really don't know what the Department of

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Agriculture wanted, what kind of information they wanted. It's --

Q. It has --

A. From this paragraph I understand that they made requests for information about benzpyrene.

Q. That's good enough. The Department of Agriculture wants information about benzpyrene, and if it turns out through research that benzpyrene is one of the culprits in cigarette smoke that causes lung cancer, that would be a development inimicable to the interests of the cigarette companies; correct?

MR. ALLINDER: Objection to the form.

A. I think that's fair.

Q. But a development that would be beneficial to the interests of smokers to know that?

MR. ALLINDER: Objection to the form.

A. It makes no difference to individual smokers what ingredient within cigarette smoke is responsible for cancer. The individual cigarette smoker wouldn't be able to spell benzpyrene much less appreciate that it's a polycyclic hydrocarbon.

Q. But if newspaper accounts indicated that a component of smoke had been identified as the active carcinogen in causing lung cancer, that would be information that the average smoker would be

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interested in knowing, don't you think?

MR. ALLINDER: Objection to the form.

A. Might or might not. Because it begs the issue. The important thing for a smoker is whether cigarette smoking causes cancer. I mean how it causes cancer, what's in the smoke that might be involved is for the most part irrelevant. What is relevant, and there I would have to agree with you, is does cigarette smoking cause cancer of the lung and am as a cigarette smoker at risk --

Q. And now --

A. -- for getting cancer of the lung from smoking.

Q. If Dr. Little is being asked by lawyers for the tobacco companies to communicate any information to the Department of Agriculture on the subject of benzpyrene, do you see that Dr. Little is in a potential conflict of interest position between the interests of the tobacco companies and the interests of the public with respect to whether or not benzpyrene plays any role in disease?

MR. ALLINDER: Objection to the form.

A. What you're implying is that Dr. Little, for whatever reason, would lie about information regarding benzpyrene, and I don't think there's any reason to believe that.

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Q. Do you see that he's in a potential conflict of interest position? That was the question, Dr. Rubin?

MR. ALLINDER: Object to the form. And I've lost the question. Would you like to hear it read back.

THE WITNESS: I heard the question.

MR. ALLINDER: Okay.

THE WITNESS: I'm considering my answer, --

MR. ALLINDER: Okay. Object to the question.

THE WITNESS: -- Mr. Allinder.

A. We are all presented frequently with potential conflicts of interest, but a potential conflict of interest does not mean a true conflict of interest. Most of us rise above what are potential conflicts of interest. We do the correct and honest thing. And I think that we should accord the memory of Dr. Little that courtesy, assuming that he would behave the way the rest of us do.

Q. But you recognize that with respect to that lofty goal that you just expressed some individuals do not rise above the potential for conflicts of interest?

MR. ALLINDER: Objection to the form.

Q. True?

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A. Unfortunately there are scoundrels in the world.

(Plaintiffs' Exhibit 3511 marked for identification.)

Q. Would you take a look at Exhibit 3511, Dr. Rubin.

A. I see it.

Q. Do you recognize this as another of the press releases that you've reviewed in preparation for your deposition?

A. I have some recollection to that, yes.

Q. This is another press release from The Council for Tobacco Research and it's dated in February of 1969; correct?

MR. ALLINDER: Dick, before Dr. Rubin answers that question, can I ask for a clarification of the record? It looks like what we have is what may appear to be two documents attached together, which is fine, but we ought to probably look at these as two separate documents, and you're asking a question about a document singular?

MR. GILL: I won't have any question about what may or may not be a second document.

MR. ALLINDER: So your question is about the first two pages --

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MR. GILL: That's correct.

MR. ALLINDER: -- of this Exhibit?

MR. GILL: That's correct.

MR. ALLINDER: Do you understand that.

THE WITNESS: I do.

MR. ALLINDER: Would you like the question read back?

THE WITNESS: No.

MR. ALLINDER: Okay.

BY MR. GILL:

Q. The question was whether you recognize this as a press release issued by the CTR in February of 69?

A. I see it, yes.

Q. And it indicates that journalists or anyone with questions should contact W. T. Hoyt; that's our Dr. Hoyt as apparently referenced in the prior Exhibit 3510 that dealt with the B.A.T. visit in 1964.

MR. ALLINDER: Objection to form, no foundation, misstatement of facts.

Q. Does that appear to be correct, Dr. Rubin?

MR. ALLINDER: Same objection.

A. It says "Contact: W. T. Hoyt".

Q. Now we're five years out now from the 1964 Surgeon General report as of the time that this press release was issued; correct?

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A. That is correct.
Q. There is a quote in the second paragraph of the first page that reads as follows, quote, "'The gaps in knowledge are so great that those" -- "that those who dogmatically assert otherwise - whether they state that there is or is not such a causal relationship - are premature in judgment. If anything, the pure biological evidence is pointing away from, not toward, the causal hypothesis.'" End of quote. Did I read that correctly?
A. You did.
Q. This quote is attributed in the press release to Dr. Little; is it not?
A. That's correct.
Q. So five years after the Surgeon General's 64 report and 15 years into his tenure as scientific director of CTR, Dr. Little is still making public statements that the case against smoking has not been proved; true?
MR. ALLINDER: Object to the form.
A. That's correct.
Q. Dr. Little further asserts on that page that many factors other than smoking are significantly associated with cancer, cardiovascular disease, and chronic respiratory disease; correct?

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MR. ALLINDER: Do you see that?

THE WITNESS: I see it.

MR. ALLINDER: Okay.

A. That's correct.

Q. For those -- for other factors to be associated with those diseases irrespective of smoking, those other factors would have to have as strong a relationship to smoking and these problems; correct?

MR. ALLINDER: Object to the form.

A. That's not an easy question to answer but I'll answer it as best I can. Some 10, 12 percent of smokers get cancer of the lung. Some 90 percent, thereabouts, don't get cancer of the lung. A -- that's correct. So all of these people being exposed to the same amount of cigarette smoke, there has to be some reason why that 10 percent -- I don't want to be held exactly to 10 percent, but it's about that -- there's got to be some reason why those 10 percent get cancer and the 90 percent don't. It is assumed that are other factors involved. Other factors could be the exposure to other toxins, genetic factors, diet, and all kinds of possibilities that we're not aware of. But clearly in these cases I would say that cigarette smoke is a necessary but not sufficient factor in the pathogenesis of cancer of

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the lung.

MR. PURDY: Could I just ask that the court reporter read the beginning of your response, Doctor? I want to make sure that I understood it. Just read the first half.

(The record was read by the reporter.)

MR. PURDY: Is that what you meant to say?

THE WITNESS: Yes. Yes, I did.

Q. To attribute the lung cancer of the 10 or 12 percent of smokers with lung cancer to some factor independent of smoking, the other factor would have to have as strong an association with the disease as smoking; true?

MR. ALLINDER: Object to the form. Asked and answered.

A. That would be assuming that there is a single other factor, but I think it's more probable that there are a number of factors in our environment and that -- in our genes, if you will, that contribute to cancer. Cancer is a multistep process, and requires mutations in many genes. I think the minimum number that's been estimated is probably about 10. Some people think in lung cancer that you have to have 15 different mutations before a sell becomes cancerous. So in some people it may be that they are already

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carrying a number of mutations that by themselves do not add up to cancer, but that cigarette smoking adds sufficient mutations to reach some critical level, whereas people who do -- who smoke but do not develop cancer of the lung may have many fewer constitutional or inherent mutations and that although cancer -- although cigarette smoking may cause mutations the total number will not rise to this critical level.

Q. Are you aware of any epidemiological studies that establish a stronger association with lung cancer than smoking?

MR. ALLINDER: Object to the form.

A. It is my persuasion that 90 percent, about 90 percent, of all long cancer in the United States is caused by smoking.

Q. And that's what the epidemiologist -- that's what the epidemiological studies had shown by approximately 1970; correct?

MR. ALLINDER: Object to the form.

A. I agree.

(Plaintiffs' Exhibit 3512 marked for identification.)

Q. Exhibit 3512 is another press release from The Council for Tobacco Research dated April 22 of 1970. Is that correct, Dr. Rubin?

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A. That is correct.
Q. You've reviewed this prior to today?
A. I did.
Q. And this press release was apparently composed for CTR by a new public relations firm, Leonard Zahn; correct?
MR. ALLINDER: Object to the form.
A. Yes, sir.
Q. And in this particular press release we've got another quote attributed to Dr. Little at the bottom of the page, the bottom of the first page; correct?
A. That is correct.
Q. He states, quote, "It is becoming increasingly evident that there are many weaknesses in the epidemiological and other work some people rely on when they blame cigarette smoking as being the major cause of lung cancer and other ailments.'" Did I read that correctly?
A. You did.
Q. Do you have any idea what other -- what weaknesses in the epidemiological work that existed as of April of 1970 Dr. Little could possibly have been referring to?
MR. ALLINDER: Object to the form.
A. Well I'm hesitant to attribute any particular

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study to -- to this date because I'm not really secure in the various dates without the documents in my notes.

Q. But you did tell me that you felt that by 1970 it appeared from the epidemiological studies that approximately 90 percent of all lung cancer was attributable to smoking?

A. That is my opinion. There were some who cast doubt on the validity of these findings and I just don't know the dates. Dr. Feinstein who is a renowned epidemiologist at Yale has pointed out bias in the diagnosis of lung cancer among smokers versus nonsmokers. I believe doctor -- I think it's Dr. Seltzer, I may be wrong but I think Dr. Seltzer had come up with some questions about the reliability. There were some questions by a -- I think it was Dr. Mancuso. I mean there were people around who were questioning the validity of epidemiologic data. Whether it was 1970 or not I -- I just can't tell you.

Q. But by 1970 there were hundreds of epidemiological studies that implicated smoking with lung cancer; correct?

MR. ALLINDER: Object to the form.

A. Look, I'm not trying to denigrate the

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epidemiological studies, and as you know very well, I accept them myself. What I am saying is that although there was a consensus in the scientific and medical community to the effect that these studies represented valid associations that there were still a few voices crying in the wilderness that there were problems with these studies, and it may be that Dr. Little was referring to the Elijah's or the Jeremiah's.

Q. Or the voices in the wilderness?

MR. ALLINDER: Object to the form.

A. That's -- that's it.

MR. ALLINDER: We've got about an hour to go. When you find a breaking point we'll take a short break before we finish --

MR. GILL: Yeah, I've got one more document to ask about.

MR. ALLINDER: -- or before we do the last hour.

(Plaintiffs' Exhibit 3513 marked for identification.)

Q. Dr. Rubin, Exhibit 3513 is a memorandum dated December 8, 1970 to J. F. Cullman, III from H. Wakeham. You've reviewed this document in preparation for your deposition; have you not?

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A. I saw it.
Q. Do you know who Mr. Cullman is?
A. I think he's some kind of an executive.
Q. He was the CEO of Philip Morris in 1970. Does that refresh your recollection?
A. As I said, he was an executive.
Q. Do you recall who Helmut Wakeman was?
MR. PURDY: It's Wake -- Wakeham.
Q. Wakeham.
A. He was involved with the CTR in some capacity.
Q. Yes, he was, but he was also the head of Research and Development at Philip Morris. Did you know that?
A. I think I've heard that.
Q. So we've got the head of Research and Development at Philip Morris sending an internal memo to the CEO of the company on December 8 of 1970; correct?
MR. ALLINDER: Object to the form.
A. That's what it says.
Q. All right. Under item number 2 on page 1 Mr. Wakeham states, quote, "It has been stated that CTR is a program to find out 'the truth about smoking and health'. What is truth to one is false to another. CTR and the industry have publicly and frequently

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denied what others find as 'truth'. Let's face it. We are interested in evidence which we believe denies the allegation that cigarette smoking causes disease. If the CTR program is aimed in this direction, it is in effect trying to prove the negative, that cigarette smoking does not cause disease. Both lawyers and scientists will agree that this task is extremely difficult, if not impossible." Did I read that correctly?

A. You did.

Q. Now as you've indicated, Mr. Wakeham also had involvement with the CTR through his role as director of research and development at Philip Morris; correct?

MR. ALLINDER: Object to the form.

Q. Correct?

A. I think so.

Q. Now does it come as any surprise to you that -- that Philip Morris as a tobacco company was interested in evidence that denied the allegation that cigarette smoking caused disease?

MR. ALLINDER: Object to the form.

A. There are few things that surprise me.

Q. It would have been in the self-interest of Philip Morris in terms of sales of cigarettes to find

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evidence that denied the allegation that cigarette smoking caused disease; true?

MR. ALLINDER: Object to the form.

A. I think that's unexceptional.

Q. But CTR was supposedly embarked upon a search for the truth with respect to whether smoking caused cancer and other diseases; true?

A. I believe that's true.

Q. Do you know of any legitimate reason, if CTR were working for the public interest, why it would have been trying to prove the negative, that cigarette smoking did not cause disease?

MR. ALLINDER: Object to the form.

A. What it said is "if CTR program is aimed in this direction". CTR program was not aimed in that direction.

Q. But you would agree that if another investigator came to the interpretation that the CTR program was aimed in that direction, that wouldn't have been in the public interest, would it?

MR. ALLINDER: Object to the form.

A. It would have been wrong. No. That is incorrect, I meant. I don't mean morally wrong. It would have been totally incorrect. The results of CTR research in many respects showed adverse effects

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of tobacco on health.

Q. You've seen many documents that were internal documents written by tobacco company employees who denigrated the research efforts of CTR; --

MR. ALLINDER: Object.

Q. -- did you not?

MR. ALLINDER: Object to the form.

A. They did not like the fact that much of the CTR research demonstrated that tobacco had an adverse effect on health, that -- that is true; there were people who were unhappy with the fact that CTR was independent, that it produced research of high quality that demonstrated adverse effects of tobacco product or derivatives or condensates and things like that.

Q. And you've seen a number of internal tobacco company memoranda in which the authors denigrated the CTR research because they viewed it as irrelevant to the issues of tobacco and health and expensive as well?

MR. ALLINDER: Objection to form.

Q. True?

A. Most of the objections I believe were based on the fact that the CTR research showed that there were profound effects at the cellular and molecular and

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biological levels --

Q. Now Mr. -- Excuse me. Go ahead.

A. -- and did not improve the position of the cigarette companies.

Q. Now Mr. Wake -- Wakeham equated the position of the industry with CTR's position in denying what others found to be truth regarding the issue of smoking and health; correct?

MR. ALLINDER: Object to the form.

A. Let's -- let's just go to the sentence that you're referring to.

Q. He states, quote, "CTR and the Industry have publicly and frequently denied what others find as 'truth'"; correct?

A. That's right.

Q. And what others found as truth was that cigarette smoking caused cancer and other diseases?

A. Yes.

MR. ALLINDER: Object to the form.

Q. And Wakeham is indicating to his boss that the CTR has denied the truth of that statement in the same way that the industry has denied it?

MR. ALLINDER: Object to the form.

A. I think what he's referring to -- excuse me.

MR. ALLINDER: Go ahead.

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THE WITNESS: Huh?

MR. ALLINDER: Go ahead.

A. I think what he's referring to is not the research done under the auspices of the CTR which couldn't conceivably be consistent with that statement. What he is referring to probably are the public statements of Dr. Little that questioned whether the association was real.

Q. And the public statements of other employees of CTR that may have spoken at medical association meetings?

MR. ALLINDER: Object to the --

Q. Correct?

MR. ALLINDER: Objection to the form.

A. Yes.

Q. And the other public statements of CTR employees who may have attended medical seminars?

MR. ALLINDER: Objection to the form.

A. Perhaps. I don't -- I don't know.

Q. And it would have been those public statements by Dr. Little and the statements of employees to medical association meetings and medical seminars that would have been more widely disseminated than the results of the research studies that were undertaken through the SAB program; true?

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MR. ALLINDER: Objection. Objection to the form.

A. Well it's your statement. First I don't know about anything -- any statements other than those of Dr. Little. What was said at seminars or AMA meetings or what have you, I'm unaware of myself. And whether they had any impact beyond -- greater than the research done by CTR grantees is a highly questionable proposition. All kinds of things are said at seminars that go in one ear and out the other. What counts are the facts produced by biomedical research.

Q. Well the CTR annual reports also denigrated the tobacco theory of cancer causation; did they not? You've reviewed them?

MR. ALLINDER: Objection.

A. I have reviewed --

MR. ALLINDER: Excuse me. Objection to the form.

A. I have reviewed them, and a number of them questioned the proof of the relationship.

Q. And when Mr. Wakeham indicates that "we are interested in evidence which we believe denies the allegation that cigarette smoking causes disease," do you understand that Mr. Wakeham is talking not only

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about Philip Morris and the tobacco industry but CTR as well?

MR. ALLINDER: Objection to the form.

A. Well it doesn't say that.

Q. He uses the term "we" after a reference to what CTR and the industry have publicly and frequently denied; correct?

A. I take the antecedent of "we" to represent the tobacco industry and -- rather than the CTR.

Q. Okay. And you're attempting to in that situation infer what Dr. Wakeham meant by his use of the pronoun "we"?

MR. ALLINDER: Objection to the form.

A. As you are well aware, pronouns require antecedents and refer to their antecedent. It's not clear from this paragraph what the antecedent is, but considering the constructive role that CTR has played in American biomedical research, I would think it's more likely that Dr. Wakeham is using the antecedent as the companies rather than the CTR.

Q. But the only conceivable antecedents in this paragraph for the pronoun "we" would be industry and/or CTR?

A. I think it's probably --

MR. ALLINDER: Object to the form.

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A. I think it's probably industry.

MR. GILL: Let's take a break.

(Recess from 2:05 to 2:14 p.m.)

(Plaintiffs' Exhibit 3514 marked for identification.)

BY MR. GILL:

Q. Showing you Exhibit 3514, --

MR. ALLINDER: Excuse me. Did we get the other two copies of 3514?

MR. GILL: Oh, I'm sorry. You did not.

MR. ALLINDER: Can you give us just a moment, please.

MR. PURDY: There we go. Thanks.

MR. ALLINDER: Okay.

Q. Have you reviewed Exhibit 3514, Dr. Rubin, in preparation for this deposition?

A. I looked at it.

Q. This is an internal memo from the files of the Brown & Williamson Tobacco Company written by an I. W. Hughes; correct?

MR. ALLINDER: Objection to the form.

A. Well it says I. W. Hughes.

Q. And it's dated --

A. And it's --

Q. -- February 11, 1970?

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A. That's correct.
Q. And it's on the subject of the Auerbach/Hammond Paper; correct?
A. Correct.
Q. We talked about Dr. Auerbach's work with beagles yesterday. You recall that?
A. I do.
Q. The author, an employee of a cigarette manufacturer, states, quote, "I am of the view that this shows it is now possible to produce tumors in the respiratory system of an animal by direct inhalation." Did I read that correctly?
A. You did.
Q. And the author's talking about Dr. Auerbach's work in the inhalation tests with the beagles?
MR. ALLINDER: Objection to the form.
Q. Correct?
A. Correct.
Q. Down under point number 4 on page 1 of Exhibit 3514 the author states, quote, "This paper must affect the thinking within B&W, and would seem to me to relegate stances on good or bad statistical evaluations to second place. Indeed, this publication could reverse the hoped-for effects" -- excuse me -- "the hoped-for consequence of something

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like Project Truth." Unquote. Did I read that correctly?

A. You did.

Q. The author is -- is stating that in light of Auerbach's findings from his inhalation tests that produced tumors in the respiratory system that that would appear to confirm the statistical epidemiological research linking smoking to health problems?

MR. ALLINDER: Objection to form.

Q. True?

A. That's the substance of the memorandum.

Q. Project Truth would assumedly be some type of public relations program being pursued by the tobacco industry?

MR. ALLINDER: Objection to the form.

A. I don't know what Project Truth was.

Q. Do you know whether The Tobacco Institute ever promoted a public relations program called Project Truth?

MR. ALLINDER: Objection to the form.

A. I don't know.

Q. On the -- on page 2 of this Exhibit, the very last paragraph the author states, "All the above leads me to the view that correlation with --

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MR. ALLINDER: Would you tell me where that is again?

MR. GILL: Last paragraph on page 2.

MR. ALLINDER: Yes.

Q. "All the above leads me to the view that correlation with the human is still way off; but I accept that significant tumorigenic conditions following inhalation has been achieved." Did I read that correctly?

A. You did.

Q. The author's view of Dr. Auerbach's findings apparently differed from the view of Dr. Sommers and the CTR?

MR. ALLINDER: Object to the form.

Q. Would you agree with that?

MR. ALLINDER: Same objection.

A. Well the CTR as an organization doesn't have views. It's Sommers that had different views.

Q. And certainly the -- Mr. Hughes as an employee of a tobacco company wouldn't have had any motivation to enhance an interpretation of Dr. Auerbach's findings if they implicated cigarettes; true?

MR. ALLINDER: Object to the form.

A. You're asking me to speculate on Mr. Sommers' motivation.

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Q. No, no Mr. Hughes' motivation.
A. Mr. Hughes' motivation or incentives. I didn't know the gentleman, and I don't have any opinion on that.
Q. Did the findings of Dr. Auerbach with the beagles relegate to second place the public pronouncements of CTR with respect to the epidemiological studies?
MR. ALLINDER: Object to the form.
A. You mean in my view?
Q. Based upon your review of CTR's public pronouncements.
MR. ALLINDER: Object to the form.
A. I'm asking you to clarify your question. Are you asking me about my view whether the Auerbach paper relegated or was inconsistent or whether Mr. Hughes thought that the --
Q. I apologize.
A. -- Auerbach --
Q. My question wasn't clear; let me rephrase.
Mr. Hughes suggested that in light of Auerbach's findings, B&W, Brown & Williamson, ought not to continue to harp on whether the statistical evaluations were good or bad; --
MR. ALLINDER: Object to the --

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Q. -- correct?

MR. ALLINDER: Object to the form.

A. That seems to be the thrust of what he's saying.

Q. As far as your review of the public pronouncements of CTR on the subject of causation issue after February of 70, did Auerbach's findings change its stance with respect to whether or not the epidemiological studies were important?

A. I don't believe that they --

MR. ALLINDER: Objection.

A. -- changed their stance.

MR. ALLINDER: Object to the form.

Q. So the -- the findings of Auerbach appeared to have no effect on the public stance of CTR with respect to the causation issue?

MR. ALLINDER: Object to the form.

A. I don't think it had an effect.

(Plaintiffs' Exhibit 3515 marked for identification.)

Q. Showing you Exhibit 3515, Dr. Rubin, do you recognize this as a November 4, 1970 memo from a Mr. Senkus, S-e-n-k-u-s, to a Mr. Vassallo?

A. I see it.

Q. Have you reviewed -- you've reviewed this document as well in preparation for your deposition;

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have you not?

A. I recognize it.

Q. Do you understand that Mr. Senkus was a scientist who worked R.J.R. Tobacco Company?

A. I'll take your word for it.

Q. But he's reporting to Mr. Vassallo with respect to the minutes of a meeting to discuss results of experiments with smoking dogs conducted by Dr. Oscar Auerbach; correct?

MR. ALLINDER: Object to the form.

A. That's what it says.

Q. And apparently the meeting occurred at the office of The Council for Tobacco Research on November 3 of 1970; correct?

MR. ALLINDER: Object to the form.

A. That's what it says.

Q. And the author indicates that a discussion was held preliminary to the presentation to be made by Dr. Auerbach to the Tobacco Working Group at the National Cancer Institute on November 9, 1970; correct?

A. Right.

Q. So apparently Dr. Auerbach was going to be making a presentation to the Tobacco Working Group of NCI on November 9 that was going to relate to his

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study, his inhalation studies with the beagles?

MR. ALLINDER: Object to the form.

Q. Is that the way you read this?

A. That's the way I read it.

Q. Now first of all it indicates some members of the Tobacco Working Group committee of NCI that participated in this meeting; correct, it lists four of them?

A. It doesn't say of NCI, it says TWG participants.

Q. And TWG would stand for Tobacco Working Group in the preceding paragraph; would it not?

A. Yes, but these are not representatives of NCI.

Q. All right. So we've got the Tobacco Working Group that's going to receive a presentation from Dr. Auerbach at NCI?

A. That's correct.

Q. Now are you familiar with this term, "the Tobacco Working Group"?

A. It's my understanding that there was a group formed funded by NCI and participated in by CTR or for the tobacco industry, perhaps some other people, that constituted a Tobacco Working Group.

Q. And obviously that -- that NCI had some type of a study under way with respect to tobacco and health?

MR. ALLINDER: Object to the form.

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A. One or more.
Q. Now apparently Helmut Wakeham, the author of the previous Exhibit, was one of the members of this Tobacco Working Group at NCI?
A. That's correct.
Q. Along with a Dr. Murray Senkus, the author of this particular exhibit, 3515?
A. That's what it says.
Q. And assuming that Dr. Senkus had a significant position in Research and Development at R.J.R., at least two of the members of this committee, of this TWG committee, were high-ranking scientists at tobacco companies?
MR. ALLINDER: Object to the form.
A. If -- if they were indeed as you describe them, then that's correct.
Q. And do you recognize the name Dr. Alex Spears who was also one of the TWG participants from your review of documents in this case?
A. I've come -- come across the name.
Q. And he was the head of Research and Development at Lorillard; was he not?
A. What I remember is he was a director of research somewhere.
Q. Now others present at this meeting were an Alex

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Holtzman from the legal department at Philip Morris; do you see that?

A. I do.

Q. And another person from the legal department at Philip Morris by the name of Mr. Hall?

A. Yes.

Q. And then there was a Mr. William Shinn who was an attorney at the Shook Hardy law firm, Mr. Allinder's law firm. Do you see that?

A. I see it.

Q. And then there was some CTR staff present, Doctors Hockett and Hoyt, and Dr. Sommers, the chairman of the Scientific Advisory Board?

MR. PURDY: Object to the form.

Q. Correct?

A. I see it.

Q. All right. So we've got a meeting of representatives of the tobacco industry, representatives of the legal departments, and high-ranking management representatives of CTR all gathered together to discuss Dr. Auerbach's presentation to the -- to the Tobacco Working Group committee at NCI?

MR. ALLINDER: Object to the form.

Q. Correct?

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A. I think that that's what it looks like.
Q. And then the author goes on to state after indicating who participated in this meeting that "The medical people at the meeting; namely, Fagan, Kreisher, Lisanti, Hockett, and Sommers, emphasized the following points which should be raised with Dr. Auerbach after his presentation at the NCI on November 9." Correct? Did I read that correctly?
A. I think you did.
Q. Now given the fact that apparently the CTR did not wish to continue Dr. Auerbach's funding for further smoke inhalation studies regarding the beagles as we discussed yesterday, --
MR. ALLINDER: Object to the form. Misstatement of facts.
A. I was unaware that CTR had funded Dr. Auerbach. Did they?
Q. Didn't CTR fund Dr. Auerbach's beagle inhalation tests?
MR. ALLINDER: Object to the form.
A. Not to my knowledge.
Q. All right.
A. But if you have information to the contrary, please present it to me.
Q. Let's -- let's assume that you're correct, that

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Dr. Auerbach's beagle inhalation studies were conducted in -- independent of any CTR funding. Do you have any suggestion to offer as to why the CTR and tobacco company scientists and lawyers should be meeting to discuss his work?

MR. ALLINDER: Objection to the form.

A. You -- you want me to speculate on people's motivation?

Q. Dr. Auerbach certainly should have been free to seek funding from NCI for his work without any involvement from CTR or tobacco company personnel?

MR. ALLINDER: Object to the form.

Q. True?

A. Well it's one of those things true, true, and unrelated. I -- I don't see anything here regarding funding of Dr. Auerbach by NCI. You'll have to call my attention to that.

Q. Well in any case those present apparently came to the conclusion that at most only one of Dr. Auerbach's slides suggested a carcinoma?

MR. ALLINDER: Do you have a reference to that?

MR. GILL: Page 2.

MR. ALLINDER: Third paragraph from the bottom?

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MR. GILL: Yes.

THE WITNESS: Now just let me understand, are we through with this funding issue?

MR. GILL: Yes, you can just respond to this question.

MR. ALLINDER: I would like to hear the question back, please.

(The record was read by the reporter.)

MR. ALLINDER: Object to the form.

THE WITNESS: I'm trying to find this.

MR. ALLINDER: It's the third paragraph from the bottom. Page 2.

A. It says "Under any circumstances, only one of the slides suggests a carcinoma. None of the others could be regarded as cancerous." Speaks for itself.

Q. And was the discussion in this meeting directed toward faults that were found with Dr. Auerbach's conclusions that he had conducted a smoke inhalation study that produced tumors in beagles?

MR. ALLINDER: Object to the form.

A. Well it has a number of things here. It has comments by Dr. Sommers regarding the smoking techniques, the effects of stress, has also the comments regarding the photographic quality of the slides.

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Q. All of the comments are essentially --
A. And --
Q. -- critical; are they not?
A. I haven't finished talking.
Q. Do you see any comments that aren't critical?
MR. ALLINDER: Were you done with your prior answer?
THE WITNESS: Huh?
MR. ALLINDER: Were you done with your prior answer?
THE WITNESS: I was not done with my prior answer.
MR. ALLINDER: You have a right to finish.
A. And there's also a statement that "some 20 pathologists throughout the United States would not commit themselves that Dr. Auerbach has produced cancer in dogs, as he claims. While many of these pathologists may be a part of what one might call the anti-tobacco group, nonetheless, they seriously question Dr. Auerbach's conclusions." So yes, I would say that the comments here are critical of Dr. Auerbach's findings.
Q. And if CTR were operated as an agent -- as an organization truly independent of the interests of the tobacco company shareholders, what possible

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purpose would be served by its medical personnel getting together with tobacco company lawyers and scientists to criticize the results claimed by Dr. Auerbach?

MR. ALLINDER: Object to the form.

A. Well of course I wasn't there, and as I've explained before, I do not consider myself an expert on psychological motivation. However, it would seem to me reasonable to speculate that this matter of a -- producing respiratory cancer by inhalation, which would have been the first authentic demonstration in a large animal, would have been of substantial importance to the companies that they would have called upon personnel of the CTR as a resource to provide them with information regarding Dr. Auerbach's paper and this new, potentially very important finding. Clearly they wanted to know from a world-class expert like Dr. Sommers whether this was indeed what it purported to be or were there questions about it, and they presumably asked Dr. Fagan similar questions. So it seemed to me that they were using personnel of the CTR as a resource to educate themselves as to the quality of the findings.

Q. So this is another example in which the tobacco industry is using CTR as its own resource as opposed

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to being a resource for the public with respect to learning the truth about tobacco and health?

MR. ALLINDER: Object to the form.

A. Well I wouldn't agree with that at all. They're using them as an educational resource for interpretations that may be important to the industry, may be -- for instance, I could envision a scenario that if Dr. Sommers had said This looks like the real thing, it looks like a great model, they might have said, Well let's put $10 million into producing this model and studying cancer this way. I would not put a negative spin on this at all.

Q. And if the Auerbach beagle inhalation studies had demonstrated a model for producing tumors caused by smoke inhalation, that definitely would have been significant information to tobacco companies with respect to their economic interest in selling cigarettes?

MR. ALLINDER: Object.

Q. True?

MR. ALLINDER: Object to the form.

A. Well I don't know. It might have.

(Plaintiffs' Exhibit 3516 marked for identification.)

Q. Exhibit 3516 is a three-page memorandum dated

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November 12, 1971 from an R. N. Saleeby, S-a-l-e-e-b-y, to Dr. Wakeham. You have reviewed this document in preparation for your deposition, Dr. Rubin?

A. I have seen it.

Q. If you'd look at page 2. The author here is commenting to Dr. Wakeham on the author's review of CTR abstracts of research projects dated November 1, 1970; correct?

A. Yes.

Q. And on page 2 the author states under item 2, quote, "The cancer program ($1,100 million), of all things, seems particularly weak. There is a lot of good work going on, but the CTR grants are in those areas safest from the likelihood of coming up with anything." Did I read that correctly?

A. You've read it correctly.

Q. Yeah. Do you find it curious that this tobacco industry employee found that the CTR grants appeared to be in those areas safest from the likelihood of discovering anything with respect to cancer?

MR. ALLINDER: Object to the form.

A. Dr. Saleeby's name is not exactly a household word in experimental cancer and I'd have to know who he was or is and the quality of his thinking before I

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would comment upon the accuracy or inaccuracy of his impression.

Q. If you'd look at page 3 of the Exhibit. Dr. Saleeby states, "On the positive side, some of the chronic respiratory disease and other human studies are interesting. The cardiovascular program is weak, but certainly could be improved in terms of research challenge. Of course, this is a dangerous area, as we have discussed, as is the nicotine question." End of quote. Did I read that correctly?

A. You did.

Q. So the author is indicating that as far as the tobacco industry is concerned research on cardiovascular diseases related to tobacco smoking could be a dangerous area?

MR. ALLINDER: Object to the form.

A. It doesn't say anything about the tobacco industry here. This is his opinion. I -- I -- I don't know how much credence to put in that opinion. All I can do is see the name Saleeby and what he wrote. Presumably this is his opinion.

Q. The CTR, if it were acting in the public interest, with respect to the direction of the research that it sponsored should certainly have been trying to develop a strong research effort with

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respect to the relationship between tobacco smoking and cardiovascular disease; you would agree?

A. I would agree with that, and in my experience as an investigator and as an editor and reviewer of journals, in my opinion they did.

Q. But apparently not in Dr. Saleeby's opinion.

A. Then you'll have to put Dr. Saleeby's credibility against mine.

Q. And Dr. Saleeby of course when he wrote this memo to Dr. Wakeham wasn't preparing to testify in any lawsuit with respect to the caliber of the research conducted by CTR?

MR. ALLINDER: Objection to the form.

A. I don't know what Dr. Saleeby was preparing to do, but I am prepared to defend my powers of analysis of the program against Dr. Saleeby's.

(Plaintiffs' Exhibit 3517 marked for identification.)

Q. Dr. Rubin, this is a two-page memo dated December 22, 1971 from Murray Senkus to Mr. Vassallo. These are the same two gentlemen from R.J.R. that we came across on a prior exhibit. Do you recall that?

A. I do.

MR. ALLINDER: Objection.

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Q. Do you see the notation --

MR. ALLINDER: Excuse me.

Q. -- to R.J.R. in the upper left-hand corner of this memo?

MR. ALLINDER: Objection to the form.

A. I see it.

Q. And this is a memo that summarizes a meeting that occurred with respect to a discussion of the Auerbach smoking dog experiments under the sponsorship of NCI; do you see that?

A. I see that, and I would mention that I do not see sponsorship of CTR as you suggested.

Q. And this particular meeting occurred in the offices of CTR; correct, the meeting to discuss the Auerbach smoking experiments on dogs?

A. That's what it says.

Q. And present at this meeting were three representatives of The Council for Tobacco Research; Doctors Lisanti, Hoyt and Hackett; correct?

MR. ALLINDER: Hockett.

Q. Hockett.

A. That says --

MR. PURDY: Objection to the form.

A. That's what it says.

Q. And then there were three representatives of

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Philip Morris; Mr. Holtzman, who is an attorney, and there's Dr. Saleeby again; do you see that, and Dr. Wakeham?

MR. ALLINDER: Object to the form.

Q. They were present.

A. I see it.

Q. And then two representatives of R.J. Reynolds including Mr. Senkus.

A. That's what I see.

Q. And so at least for the second time now we have members of CTR and members of the tobacco industry getting together to discuss Dr. Auerbach's smoke inhalation studies on beagles; correct?

A. That is correct.

Q. On page 2, if you would. This documents the conclusions reached at the meeting; does it not?

A. It says --

MR. ALLINDER: Object -- object to the form.

A. -- it says "Conclusions Reached at the Meeting".

Q. It reads, quote, "It was concluded that discussion of the pertinent scientific data with Dr. Gori will convince him that the Auerbach experiments should be abandoned. The staff at CTR will assemble the information that was to be submitted to Dr.

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Gori. The Research Directors of the tobacco companies will meet with the CTR staff on January 17 to prepare the final report at that time. In a telephone conference (sic), Dr. Gori has agreed to meet with the research directors on January 18th to discuss these data." Did I read that correctly?

A. You did.

MR. ALLINDER: Excuse me. One exception I want to make. It's "conversation" rather than "conference".

Q. Now does it appear that the conclusion of this meeting between CTR representatives and tobacco company representatives was that some report was going to be prepared by CTR in which it would attempt to persuade Dr. Gori to see to it that Dr. Auerbach's smoking inhalation study research be abandoned?

MR. ALLINDER: Object to the form.

A. It says that the staff at CTR will assemble the information and submit it to Dr. Gori.

Q. And for the purpose of attempting to convince Dr. Gori to abandon further study of the Auerbach smoke inhalation experiment?

MR. ALLINDER: Object to the form.

Q. True?

A. That's correct.

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Q. Now Dr. Gori, as we discussed yesterday, he was a very high-ranking administer -- administrator at NCI?

MR. ALLINDER: Object to the form.

A. That's my understanding.

Q. And he would have a significant role in determining which funding requests should be submitted to the review board of NCI?

MR. ALLINDER: Object to the form.

A. I don't think so.

Q. Does it appear that at least the authors of this memo thought that Dr. Gori had some input into the matter of whether or not Dr. Auerbach would receive further funding?

A. Might have.

MR. ALLINDER: Object to the form.

A. I don't --

Q. Now do you recall a -- an exhibit that we discussed this morning that set out certain goals for C -- TIRC research that had to do with research wisely conceived, patiently executed, in a fearless search for the truth?

MR. ALLINDER: Object to the form.

A. We discussed that.

Q. We discussed the fact that often initial

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research needs to be followed up with further research in order to derive full benefit from the effort.

A. Often happens.

Q. And here we've got CTR combining with tobacco company representatives to put together some written report, the purpose of which would be to convince NCI to abort additional funding of Dr. Auerbach's smoke inhalation studies?

MR. ALLINDER: Object to the form.

Q. True?

A. That's what the memo seems to say.

Q. Apparently CTR and these particular representatives of the tobacco industry were disinclined to find out the results of further studies dealing with Dr. Auerbach's smoking beagles.

MR. ALLINDER: Object to the form.

Q. Is that a fair interpretation of this memo?

MR. ALLINDER: Same objection.

A. No.

Q. Certainly they weren't attempting to persuade NCI to engage in patient research --

MR. ALLINDER: Object to the --

Q. -- with respect to Dr. Auerbach?

MR. ALLINDER: Object to the form.

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A. Well the -- apparently from this memorandum the issue of the Auerbach's findings was discussed by the Scientific Advisory Board, which was a group of very eminent scientists. According to the memorandum the SAB concluded that the experiment would be meaningless from a medical standpoint and then proceed to give the reasons why it would be meaningless. If indeed the SAB was correct in its assessment, then any further experiments would be a waste of money. And might even lead to misleading results of --

Q. It's unusual for one research-sponsoring group to be involving itself in the funding decisions of another group; is it not?

MR. ALLINDER: Object to the form.

A. Well I'm not sure that the CTR, the tobacco companies, or the SAB was in any position to be involved in the funding decisions of the National Cancer Institute. They were free to submit any information they wanted, because this is a free country and they have first amendment rights just like anyone else, and I'm sure that various agencies of the government receive all kinds of unsolicited advice, some of it perhaps well-advised and probably a lot of it ill-advised.

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Q. Dr. Rubin, in your review of documents in this and other tobacco cases, do you recall reviewing information regarding some smoke inhalation studies that were performed by a Dr. Clayton Loosli through some funding provided by CTR?

A. I have a vague recollection in some document that refers to Loosli. I don't recall seeing the -- you know, Loosli's own comments or correspondence, but somewhere there is a reference to Loosli.

Q. Do you recall that Dr. Loosli was a member of the SAB at the CTR?

A. Yes.

Q. And do you recall that Dr. Sommers disputed the interpretation that Dr. Loosli play -- placed upon the results of Dr. Loosli's smoke inhalation studies dealing with mice?

MR. ALLINDER: Object to the form.

A. I think you'd have to give me the documents because I don't recall exactly what went on there.

Q. That wasn't a matter that you paid a substantial amount of attention to in reviewing the documents?

MR. ALLINDER: Object to the form.

A. I got the documents yesterday.

Q. Was that the first time you had seen any document that referenced the smoke inhalation work of

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Dr. Loosli?

MR. ALLINDER: Object to the form.

A. I didn't see any work that documented it and indeed I may have reviewed papers by Dr. Loosli, I can't remember all of these things without my notes, so I -- I can't tell you that was the first time at all, but I have not reviewed any material related to Dr. Loosli himself, as I say, that it comes to my attention that there was some kind of a reference to Dr. Loosli's experiments, and I would have to see the documents to refresh my memory on it.

(Plaintiffs' Exhibit 3518 marked for identification.)

Q. Dr. Rubin, do you recall reviewing a two-page letter dated February 20, 1974 to Dr. William Gardner from Dr. Homburger?

A. Yes.

Q. Dealing with the subject of Dr. Homburger's research for the CTR that we discussed yesterday?

A. Yes.

Q. On page 2 of that Exhibit Dr. Homburger refers to the fact that his finding of a high incidence of laryngeal cancer in smoke-exposed hamsters was unexpected. Do you see that?

MR. ALLINDER: Object to the form.

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A. He's --

MR. ALLINDER: Are you referring to the first paragraph?

MR. GILL: Yes.

MR. ALLINDER: Second sentence.

A. The word "unexpected" is there.

Q. And Dr. Homburger indicates that that finding presented a lead, the active pursuit of which The Council for Tobacco Research owed to the general public; correct? That's what he says?

A. And to Dr. Homburger's company that provided it.

Q. But CTR determined not to pursue that lead --

MR. ALLINDER: Object.

Q. -- through further funding; correct?

MR. ALLINDER: Object to the form.

A. CTR did not pursue that.

Q. And Dr. Homburger states in the last sentence of his letter, quote, "It could be inferred that you wish to suppress, rather than to encourage, scientific investigation directed at the second most important smoke-associated respiratory carcinoma of man." Did I read that correctly?

A. You read it correctly.

Q. This is a serious charge by Dr. Homburger; is it not?

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A. It's a serious charge coming after his demand for an apology which you can see on page 1, and should be considered as an attempted intimidation of the CTR. The accusation of suppression here implies that he had complied with the terms of his contract, that he had found something important and that the motivation behind the decision not to continue the contract was -- was suppression and was motivated by evil concerns.

Q. Evil concerns being the interests of the tobacco companies that owned CTR?

A. Well anyway you want to put it, but this is clearly a letter in which Homburger is trying to intimidate these people into providing him money, which he was unable to get either from the CTR or from the National Cancer Institute.

Q. And that's your evaluation of the matter based upon your let the chips fall where they may philosophy?

A. You are so right.

(Plaintiffs' Exhibit 3519 marked for identification.)

Q. Showing you Exhibit 3519, Dr. Rubin, this is a memorandum that I take it you reviewed prior to this deposition?

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A. I did.
Q. This is a confidential memorandum from LSZ to Henry and Tom; correct?
A. That is what it says.
Q. All right. Now I want you to assume that the evidence will show that LSZ is Mr. Leonard S. Zahn of the Leonard Zahn public relations firm that worked for the CTR as of April of 1974. All right?
A. That's correct.
Q. And that this memo was directed to individuals at CTR. All right?
A. Uh-huh.
Q. Now you're familiar with the episode that Mr. Zahn reports about in this memo; are you not?
A. It's something to do with a press conference, a press conference.
Q. Mr. Zahn found out that Dr. Homburger had arranged to have a press conference at a medical gathering where he was giving a speech; correct?
MR. ALLINDER: Object to the form.
A. The American Society of Experimental Pathology, of which I was a member at the time.
Q. And then Mr. Zahn, as a public relations person, took it upon himself to attempt to use his influence to get the press conference cancelled?

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MR. ALLINDER: Object to the form.

Q. Correct?

A. That's correct.

Q. And he succeeded?

MR. ALLINDER: Object to the form.

A. He did.

Q. He gloats about that fact in this memo; does he not?

MR. ALLINDER: Object to the form.

A. Well, I'm not going to comment on your use of the term "gloat".

Q. Can we agree he takes credit for that result?

MR. ALLINDER: Object to the form.

A. He describes his success.

Q. And then he goes on to report to Tom and Henry that when Mr. -- when Dr. Homburger showed up in the press room during one of the days of the conference he had privately arranged to have Mr. -- Dr. Homburger escorted from the press room so quickly that he would have had little opportunity to talk to reporters?

MR. ALLINDER: Excuse me, Dick. Do you have a reference?

MR. GILL: The last paragraph on page 2.

MR. ALLINDER: Thank you. Object to the

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form.

Q. Mr. Zahn reports that when Homburger arrived in the press room he was given a cordial welcome and nicely, quote, "hastened," unquote, out the door; correct?

MR. ALLINDER: Object to the form.

A. This should be taken in the context of the other information in the memorandum. Mr. Zahn in paragraph number 4 talks about the issues with Mrs. Graves. I knew Judy Graves well. She was a very honorable, efficient person. He then says "Judy called me at my hotel a few hours later to say she had checked and found that my comments were true." So at least Judy Graves and other people with whom she checked had agreed with Mr. Zahn. She then says that some ASEP people had described Homburger as a quote, "operator," and indicated they thought he was exceeding decency and courtesy, if not the truth. Now in the light of all of these --

Q. We only have a few minutes left, Dr. Rubin.

MR. ALLINDER: Excuse me.

MR. GILL: I'm afraid that's not responsive, Bill.

MR. ALLINDER: It is.

MR. GILL: If you'll give me a couple more

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minutes then I don't mind.

MR. ALLINDER: Well what you have done is you have suggested to him with your questions with this memo that it reflects inappropriate behavior and what he is telling you in this answer is that that is not entirely correct, so if you want to give him that summary response, we'll move onto the next question.

Q. All right. Let's -- let's do this: Can you just tell me whether or not, Dr. Rubin, you condone the behavior of the agent of CTR in connection with the conduct that is described in this memo?

MR. ALLINDER: Object to the form.

A. According to the information that I read in this memo, there were grave concerns about Dr. Homburger's character and about the nature of the press conference and information that he wished to divulge or to disseminate in that conference. It was the -- then the decision of the press officer of The American Society of Experimental Pathology; namely, Judy Graves and others in her group, that it would be inappropriate to have Dr. Homburger give the press conference, and it was their decision to hasten him out of the door. There's nothing in this that suggests to me that Mr. Zahn did this. This was the decision of the members of the American Society for

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Experimental Pathology.

(Plaintiffs' Exhibit 3520 marked for identification.)

Q. This will be the last exhibit, Dr. Rubin. Do you recognize this as a November 13, 1978 memo to the file by T. S. Osdene of Philip Morris?

A. It says so.

Q. And do you recognize the name, that T. S. Osdene is a doctor who was a member of the Research and Development department at Philip Morris?

MR. ALLINDER: Object to the form.

A. I'll take your word for it.

Q. On the very last -- this is a memo that deals with recommendations for long-term plans for CTR, that's the title of it; correct?

A. Correct.

Q. On the very last page of the memo there is a list of subjects to be avoided and there are three that are enumerated. Do you see that?

A. I see it.

Q. Now number 1, Developing new tests for carcinogenicity, that would have been a worthwhile program for CTR to fund; true?

MR. ALLINDER: Object to the form.

A. I think it could be.

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Q. And number 2, an attempt to relate human disease to smoking, that would have been a worthwhile subject for CTR to fund given the reasons why CTR was established in the first place; true?

MR. ALLINDER: Object to the form.

A. My own guess is that it was late in the game for that. I think that the relationship of human disease to smoking had already been established. I would -- and I certainly accepted it. I think the thing to do was to look for basic mechanisms.

Q. Well smoke inhalation studies might have related human disease to smoking; correct?

MR. ALLINDER: Object to the form.

A. As far as I was concerned smoking caused human disease.

Q. All right.

A. Now the --

Q. Just so we can finish. The third of those is to conduct experiments which require large doses of carcinogen to show additive effect of smoking. Would that have been a worthwhile subject to fund?

MR. ALLINDER: Object to the form.

A. I think it would be reasonable to do it in my eyes. It's a matter of taste. I wouldn't have any taste for those particular experiments. I don't

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think they would tell us much. However, I think under certain circumstances they would be reasonable experiments.

Q. Well certainly new tests for carcinogenicity would be a very appropriate thing to do?

A. Would be interesting, under --

Q. Do you know whether --

A. -- under -- depending upon the experiments.

Q. And do you know whether or not CTR ever undertook any experiments in the three categories that Dr. Osdene suggested should be avoided?

MR. ALLINDER: Object to the form.

A. Well yes, there -- there were.

Q. In which groups?

A. Well, I -- again I don't have my notes here and I would have to go back to them to answer it with any accuracy. The attempts to relate human disease to smoking, for instance, the work on relationship of smokers or the risks of smokers in coronary artery disease continued to my knowledge, the work on the effects on fetal birth weight and development in smoking women continued. I think there may have been others. I would have to go back to my notes, but I think number 2, there were projects that were undertaken and continued.

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Q. All right. Lastly, Dr. Rubin, have you requested --

MR. ALLINDER: Excuse me, Dick, I'll -- I'll permit you to go on. And you also say that in number 3 there are examples as well?

THE WITNESS: I think there are.

MR. ALLINDER: Okay. Please go ahead.

THE WITNESS: I think there are.

BY MR. GILL:

Q. None come to mind at the moment?

A. I have to go back to my notes on that.

Q. Have you --

MR. ALLINDER: I just wanted to complete -- complete the answer.

Q. Have you requested of Doctor -- have you requested of Mr. Allinder at any point in your consultation work to see any of the documents that the tobacco companies have labeled as privileged --

MR. ALLINDER: Object to the form.

Q. -- in this litigation?

A. I haven't requested from him specifically privileged documents.

Q. And to your -- to your understanding has he provided you with any?

MR. ALLINDER: Objection to form.

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Q. For your review?
A. Well I signed a confidentiality statement.
Q. All right. I'm not including that.
A. In terms of all of the --
Q. Just so you clearly understand the question, it's the last one of the deposition.
You understand that a number of documents have been designated as privileged for either attorney-client reasons or work product reasons by the various Defendants in this case and they haven't been produced to the State of Minnesota or Blue Cross Blue Shield. Do you understand that?
A. I understand that.
Q. Have you as a consultant to the tobacco company, to Mr. Allinder's law firm, with regard to this litigation, asked to see any of those documents?
MR. ALLINDER: Objection.
A. No, I have not.
Q. All right. And has -- to your understanding has Mr. Allinder provided you with any of those documents for your review?
MR. ALLINDER: Objection.
A. Not to my knowledge.
Q. All right. Thank you, Dr. Rubin. I don't have anything further.

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A. Thank you.

(The deposition was in recess at 3:11 p.m.)

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C E R T I F I C A T E

I, Judy A. Steinke, hereby certify that I am qualified as a verbatim shorthand reporter; that I took in stenographic shorthand the testimony of EMANUEL RUBIN, M.D., at the time and place aforesaid; and that the foregoing transcript, Volume II, consisting of pages 244 through 459, is a true and correct, full and complete transcription of said shorthand notes, to the best of my ability.

Dated at Deerwood, Minnesota, this 8TH day of September, 1997.

Judy A. Steinke
Shorthand Reporter
Notary Public

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S I G N A T U R E P A G E

I, EMANUEL RUBIN, M.D., the deponent, hereby certify that I have read the foregoing transcript, Volume II, consisting of pages 244 through 459, and that said transcript is a true and correct, full and complete transcription of my deposition, except per the attached corrections, if any.

(Please check one.)

_____ Yes, changes were made per the attached

(#) _____ Signature Page Addendums.

_____ I have made no changes.

EMANUEL RUBIN, M.D.

Deponent

Sworn and subscribed to before me this day of

, .

Notary Public

My commission expires .

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